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C
A
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General Code

CUT THIS UP AND PASTE IN.

CORPORATIONS IN CALIFORNIA

BY

CHARLES A. SON

NOTICE.

Certain of the code sections printed in part II of this book are affected by the decision of the Supreme Court in *Lewis v. Dunne*, filed October 14, 1901, the effect of which decision is to render unconstitutional the acts embodying the code commissioners' bills of 1901.

Enclosed are code slips furnishing the text of the affected sections as they existed prior to the amendments of the code commissioners.

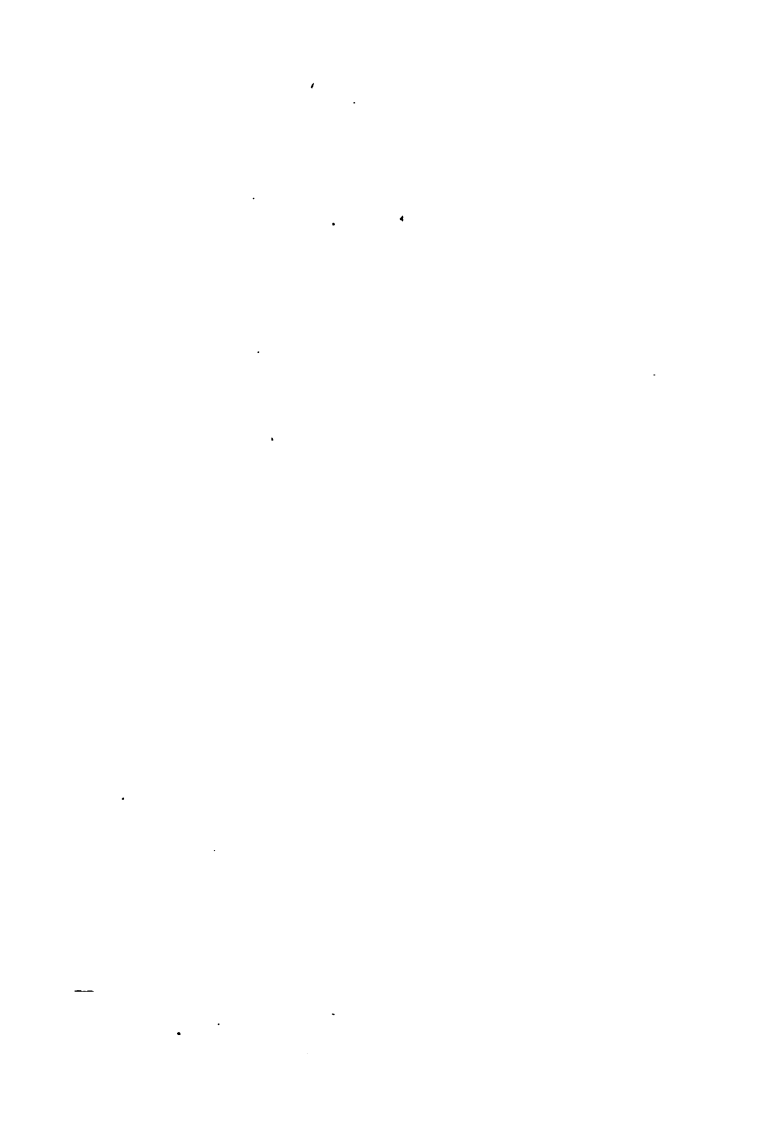
Appended is a list of sections, which though containing the verbal changes authorized by the commission, yet state in substance the existing law. Such of the other sections herein as are not found in the codes as they now stand are merely the codifications of existing statutes. As their substance is law in all respects, it is deemed unnecessary to reprint them in statute form.

Sections unchanged in substance but in which verbal or grammatical changes authorized by the code commission are incorporated:

C. C. 299, 302, 308, 314, 315, 325, 391, 393, 414, 449, 450, 514, 517, 518, 549, 551, 574.

C. C. P. 581, 542.

Penal Code. 1890, 1891.



CORPORATIONS IN CALIFORNIA

A Concise Treatise covering all Branches of the
Existing Law of California relating to Private
Corporations, including Foreign Corporations;
together with a statement
of the conditions under which
Foreign Corporations can
do business in

ALASKA, ARIZONA, NEVADA,
OREGON AND WASHINGTON

BY

CHARLES A. SON, A. M., LL. B.

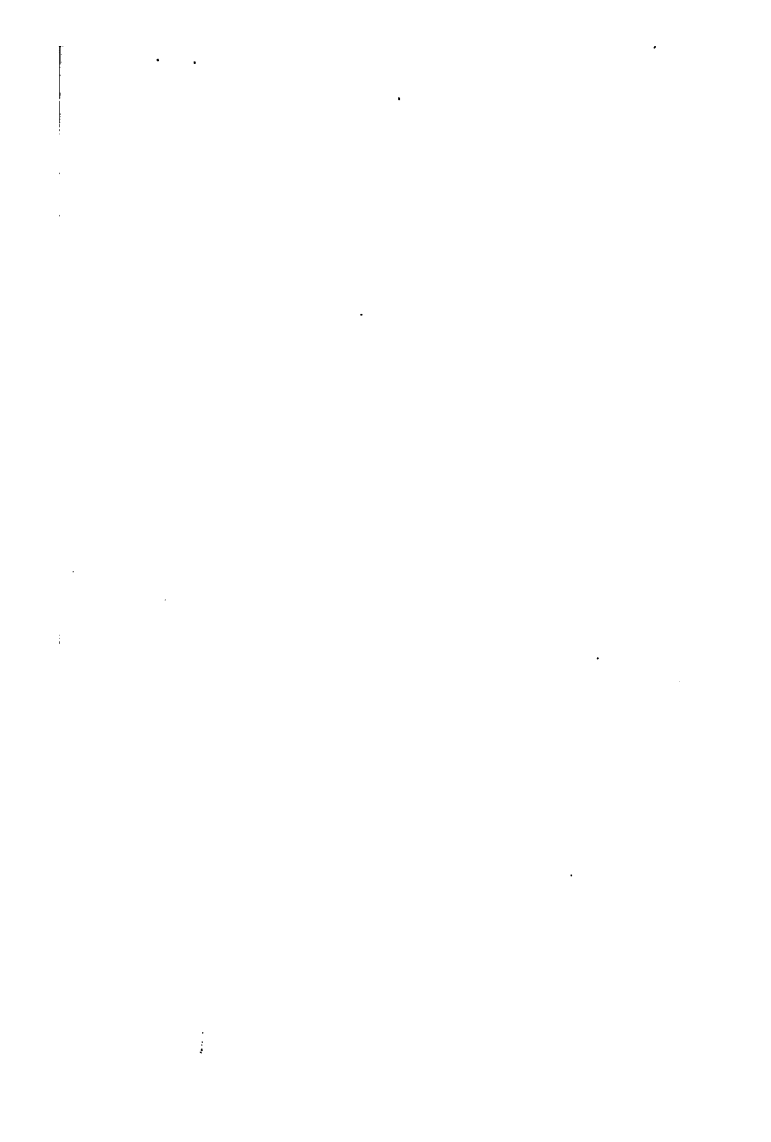
Of the San Francisco Bar

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TO
JESSE WARREN LILIENTHAL,
a master of its subject, this
book is affectionately
dedicated.



PREFACE.

This little book aims with reference to the law of private corporations, to answer the question, "What is the rule in California?" It is an attempt to set forth concisely and logically all the statute and case law of California relating to private corporations. The expression of the personal opinion of the author is no part of its object and is nowhere attempted.

If I have accomplished my purpose, whatever the Legislature and the Supreme Court of California and the Federal courts in the state have said respecting private corporations will be found within these covers, and wherever my book is silent on questions of the law of private corporations, it is because the California authorities are also silent.

The statute law herein includes the code bills and other statutes of 1901.

Part II of the book contains in full the text of all statutes of California, now in force, relating to private corporations. The arrangement of these statutes is one of the features of the book. They are classified under the same classification as is used in the main portion of the book, so that there is collected under each heading *all* the statute law of the

state relating to its subject, whether such law is found in the session laws, the codes or the constitution. Thus, by means of the index, the reader can readily turn to all the statute law on the subject he has in mind, while by means of the table of statutes, the judicial construction of such statute law is at his command.

Part III, containing the statutes of Alaska, Arizona, Nevada, Oregon and Washington includes the laws of 1901.

CHARLES A. SON.

San Francisco, August 4, 1901.

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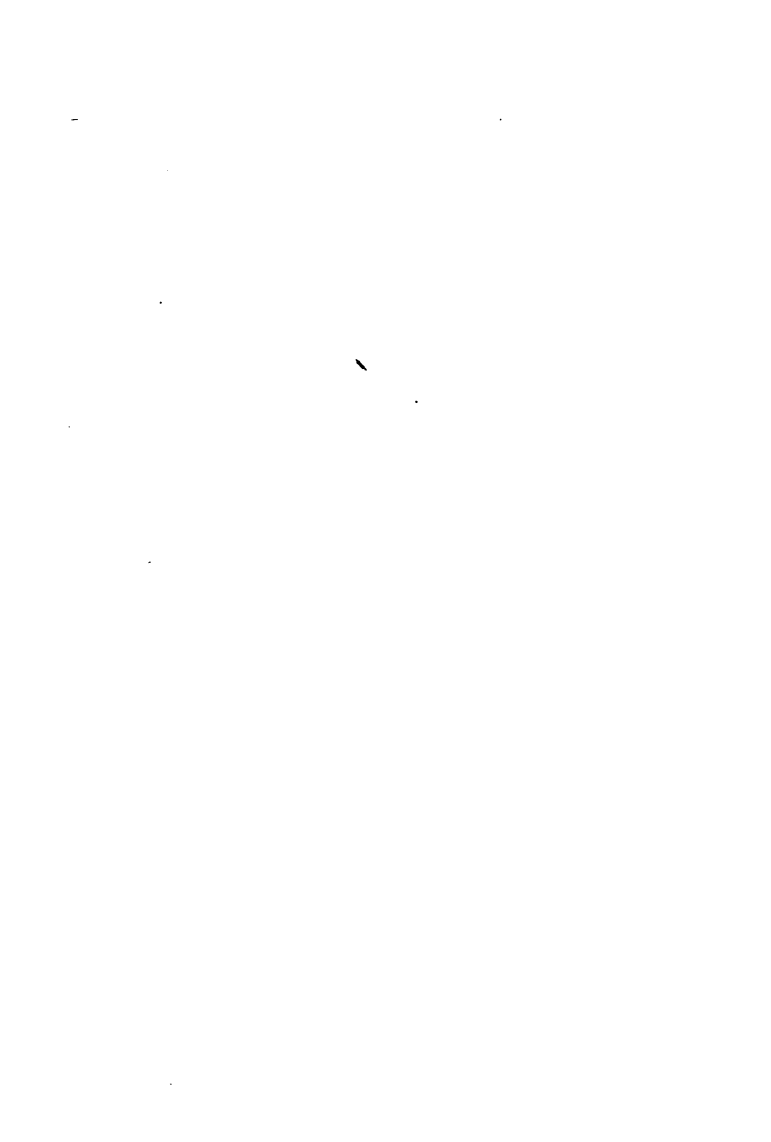


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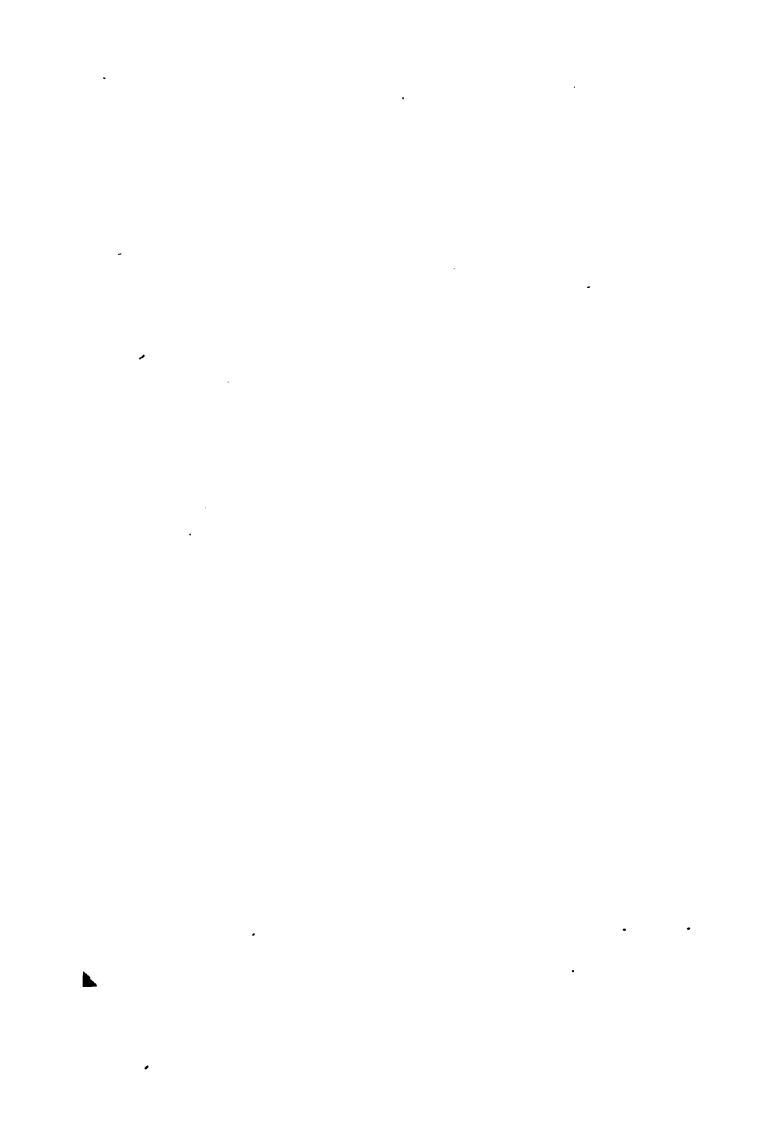
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CHAPTER I.

OF THE NATURE OF CORPORATIONS.

SEC. 1.—DEFINITION.

SEC. 2.—CLASSIFICATION OF CORPORATIONS.

SEC. 3.—SAME.

SEC. 4.—CORPORATIONS SOLE.

SECTION 1—DEFINITION.

A corporation is an artificial person [C. C. P. 17, *Touchard v. Touchard*, 5 Cal. 307], born of the law, to live for any length of time the law prescribes, and having certain powers and duties of a natural person. C. C. 283.

The right to be a corporation is itself a franchise; one conferred by government on individuals, and which does not belong to the citizens generally at common law. *Spring Valley W. W. v. Schottler*, 62 Cal. 69; *People v. Selfridge*, 52 Cal. 331.

In the strict sense of that term, there were no common law corporations [*Green v. Beckman*, 59 Cal. 545]; in California incorporation is a matter of right available under general laws. *Smith v. Eureka Flour Mills*, 6 Cal. 1.

Speaking of the nature of California corporations, the Supreme Court said in a dictum in an early case, "the corporation is little more, under our laws, than a joint stock com-

pany under the English laws, indeed true nature more nearly resembling a partnership under special articles than corporation at common law." *Chater v. Sugar Co.*, 19 Cal. 212.

Although our constitution provides XII, Sec. 4] that "the term *corporations* as in this article, shall be construed to include all associations and joint stock companies exercising any of the powers or privileges of corporations not possessed by individuals or partnerships," there is no intention to declare the mere association of individuals, no matter how numerous, creates a corporation; for example, the people (the inhabitants taken collectively) of a county are not a corporation [*People v. Myers*, 15 Cal. 33.] The object of this section appears to be to include within the constitutional provisions regulating corporations, all "persons" other than human beings and all associations other than partnerships—no matter how such associations or persons may be styled or named; but it does not mean that all such persons or associations are corporations.

SECTION 2—CLASSIFICATION OF CORPORATIONS

Corporations are of two kinds, public and private, and the Civil Code [Sec. 284] furnishes a simple test, based on the purpose for which the corporation is formed, to determine in each case to which of these classes the corporation belongs. "Public corporations are formed or organized for the government of a

portion of the state," examples of which corporations are municipalities, school districts, road districts, and levee or irrigation districts. [Dean *v.* Davis, 51 Cal. 407.] All other corporations are private [C. C. 284], no matter how much benefit the public derives from them, or how public is the nature of their business or occupation. As was said by the court in the case of California Academy of Science *v.* San Francisco, 107 Cal. 334, 40 Pac. 426: "Plaintiff is a private corporation. Undoubtedly the public derives a benefit from its labors and its contributions to science, but that is merely an incidental result of its organization and existence, and is not the essential object for which it was incorporated. The public derives similar benefits from the labors of any association for scientific purposes, whether incorporated or not." [See Home, etc., *v.* San Francisco, 119 Cal. 534, 51 Pac. 950.] The franchise to be a corporation does not in itself make the recipient 'public' in any sense; a corporation has not a single governmental power, as for example the power to exercise the right of eminent domain, unless it has in addition a franchise for a public use. [Atlantic Trust Co. *v.* Woodbridge Co., 79 Fed. 39 per McKenna J.] Just as a municipality has a private capacity as well as a public one, and is none the less always a public corporation, so a private corporation furnishing public utilities, is still private in nature.

Private corporations may be formed for any purpose for which individuals may law-

fully associate themselves [C. C. 286 profit or not for profit—and when formed under the codes, the objects stated in the articles of incorporation determine to what class of corporations they belong. *Vercout* Golden State L. Co, 116 Cal. 410, 48 375; *Perkins v. Fish*, 121 Cal. 317, 53 901.

SECTION 3—SAME.

In the sense that our law has made provision for their origin and regulation, it recognizes as distinct classes, the following kinds of private corporations: Banks, benevolent associations, bridge companies, building and loan associations, canal companies, cemetery associations, chambers of commerce, colleges, co-operative business associations, ferry companies, gas companies, homestead associations, fire, marine, life, mutual, and mutual life health and accident insurance companies, land title insurance companies, manufacturing and trading companies, mining companies, mutual benefit associations, navigation companies, railroad companies, religious associations, road companies, savings and loan associations, social organizations, street railroad companies, telegraph and telephone companies, water companies, wharf, chute and pier companies. The statutes regulating these corporations will be found in full in part II, *post*.

SECTION 4—CORPORATIONS SOLE.

One class of corporations peculiar to itself, and having little in common with other corporations except that its existence does not depend on the life of any individual or individuals, is the "corporation sole," whose creation was first provided for by act of March 30, 1878 [amendments 1877-8, p. 84], and is now by section 602, C. C. [Stats. 1897], under which section alone can corporations sole be created in California today. *Blakesley v. Hall*, 94 Cal. 159, 29 Pac. 623.

The corporation sole is an anomaly. *Mora v. Murphy*, 83 Cal. 12, 23 Pac. 63.

In one of the earliest California cases [*Santillon v. Moses*, 1 Cal. 92], wherein the plaintiff is the Catholic priest of the Mission Dolores, and the action is to recover church property from a trespasser, who pleads in defense, that plaintiff cannot maintain the action in his own name; the court, deciding in plaintiff's favor, said: "The plaintiff (priest) appears to have charge of the church property, or at least some portions of it, *coupled with an interest*. He is therefore not a mere naked agent, but his position is more analagous to that of a sole corporation in England than to that of a naked agent, and the power to sue is an inseparable incident to such corporation." This is a judicial recognition of the existence of corporations sole in California as early as 1850. *Roman Catholic Archbishop v. Shipman*, 79 Cal. 288, 21 Pac. 830 (a tax case).

declares: "The archbishop is a sole corporation. It has not need of a corporate seal, officers, or by-laws. His own will and judgment regulate his acts like any other individual acting in his own right. His title to property as an individual and as a sole corporation cannot be adverse; they cannot be distinguished except as to the beneficiary." Sec 602 of the Civil Code, which contains the existing law of California relating to corporations sole, will be found in full, part II, p.

Before passing from this subject, it may well to note that the preceding discussion of corporations sole has no application to religious corporations in general [*Mora v. Murphy*, 83 Cal. 12, 23 Pac. 63], but that the codes provide in other sections for the incorporation of a church [C. C. 603, 604]; which corporation though peculiar to itself, and only a subordinate factor in the life and purposes of the church proper can only act according to corporate forms and methods, and is in all respects, not inconsistent with the objects and purposes of its organization, subject to the general corporation law of the state. *Wheelock v. First Pres. Church*, 119 Cal. 477, 51 Pac. 841.

CHAPTER II.

ATTRIBUTES OF CORPORATIONS.

- SEC. 5—CORPORATE NAME.
- SEC. 6—CHANGE OF NAME.
- SEC. 7—SEAL.
- SEC. 8—RESIDENCE.
- SEC. 9—SAME.
- SEC. 10—CHANGE OF RESIDENCE.
- SEC. 11—CITIZENSHIP.
- SEC. 12—RIGHT TO SUE AND BE SUED.
- SEC. 13—THE RIGHT TO SUE QUALIFIED.
- SEC. 14—PLACE OF SUIT.
- SEC. 15—PLACE OF TRIAL.
- SEC. 16—PRACTICE AND PROCEDURE.
- SEC. 17—TITLE TO PROPERTY.
- SEC. 18—SAME.

SECTION 5.—CORPORATE NAME.

It has been said that the name of a corporation bears the same relation to it that the name of an individual bears to him [People v. Potter, 35 Cal. 110], but this statement seems misleading. Individuals can exist without names, but corporations in California cannot. Our Civil Code [Sec. 290] provides that the name of the corporation must be set forth in the "articles of incorporation," and compliance with the provisions of that section is a condition precedent to the existence of the corporation. [See chapter III, *post.*] In law, the corporation is recognized only by

its name [*Curtiss v. Murry*, 26 633], "though the misnomer of corporation in any written instrument does not invalidate the instrument, if it can be reasonably ascertained from it what corporation is intended." [1357.] Construing this section the Supreme Court has said it means that "misnomer which does not deceive is immaterial" [*Underhill v. Santa Barbara*, 93 Cal. 300; 28 Pac. 10] and accordingly a bequest to the "Old Lady Home" was held a valid bequest to "the Sisters of Mercy," the real name of the corporation. Very often the officers of a corporation use an abbreviation of its name under which to do business. It has been held that this is not a usurpation and will not support any action for a forfeiture on the part of the state [*People v. Bogart*, 45 Cal. 73] the decision in *Lake Co. v. S. B. Q. M. Co.* 66 Cal. 17 that taxes assessed to a corporation under an abbreviation of its name are not validly assessed or collectible, is decided solely on an interpretation of the tax laws of the state.

Until this year, incorporators had free choice in the selection of a name for the corporation; indeed Judge Hoffman once declared obiter dictum [*Hyde v. Doe*, 4 Sawyer 133]: "I am not aware of any legal obstacle to the formation by the same persons and even under the same name, of as many corporations as they may desire." The legislature has now abridged this liberty of choice by

providing that the "secretary of state shall not file any copy of the copy of any articles, or issue any certificate of incorporation to any corporation, which articles set forth the corporate name of any corporation heretofore organized in this state, or file any copy of any articles or issue any certificate of incorporation to any corporation existing at time of filing said articles, which articles set forth a name so closely resembling the name of such corporation as will tend to deceive." C. C. 296.

SECTION 6.—CHANGE OF NAME.

Change of name confers no new corporate powers or franchises, as the name was given by the corporators, not by the legislature, and the giving of it was not a legislative act. *Matter of La Societe Francaise*, etc., 123 Cal. 525; 56 Pac. 458.

Prior to the adoption of the constitution of 1879, the name of a corporation could be changed by a special act of the legislature, and the validity of such a special act was upheld in *Pacific Bank v. De Ro*, 37 Cal. 538, the court saying, "the changing the name is not the creation of a corporation and so can be done by special act." The present constitution [Art. IV, Sec. 25, Subd. 6] enacts that the legislature shall not pass local or special laws "changing the names of persons or places." Whether or not the word "person" here includes corporations is unnecessary to decide, because provision for the change of

name by corporations is made in the Code of Civil Procedure, section 1276, and this section covers all corporations. *Matter of La Societe Francaise*, 123 Cal. 525, 56 Pac. 458.

The procedure for changing name is as follows: Any corporation may, by petition, apply to the superior court of the county in which its articles of incorporation were originally filed, or in which the property of such corporation is situated, for a change of corporate name. Such a petition must be signed by a majority of the directors or trustees of the corporation, and must specify the date of the formation of the corporation, its present name, the name proposed, and the reason for such change of name. Upon filing such petition on behalf of such corporation the same proceedings may be had as upon application for changes of names of natural persons. C. C. P. 1276.

SECTION 7—SEAL.

That a corporation "has power to make and use a common seal and alter the same at pleasure" was provided in the general corporation laws of 1850 [Stats. p. 347] and 1853 [Stats. p. 87 Cal. 92] and has remained on the statute books ever since, being now embodied in section 354 of the Civil Code. Many, if not most, corporations have a corporate seal, but the necessity for it is not apparent, and the only effect of the use of it is to afford a presumption of the regular execution of the instrument to which it is affixed. [See Chap.

VII, *post.*] In *Smith v. Eureka Flour Mills Co.*, 6 Cal. 1, decided in 1856, the court said "that corporations, by the policy of this state, can contract without using a corporate seal." This was announced before the adoption of the codes in 1872 abolishing the distinction between sealed and unsealed instruments, [C. C. 1629] and what was true then, appears to be equally true now, despite the dictum in *Richardson v. Scott R. W. Y. Co.*, 22 Cal. 150, (1863) "that a corporation can only convey realty under corporate seal. This dictum stands alone. A diligent search has failed to find anything in the law of corporations¹ or of conveyancing² in force at that time, which will support it and it has not served as a precedent for any subsequent California case. There would thus seem to be no doubt but that the law today is as stated in *Smith v. Eureka Mills Co.*, *supra*. An intimation to this effect is contained in *Grieg v. Riordan*, 99 Cal. 316, 33 Pac. 913.

SECTION 8—RESIDENCE.

Where is a corporation's "residence?" There has never been a statute in this state answering the question, but the Supreme Court early laid down the rule [*Jenkins v. Cal. Stage Co.*, 22 Cal. 538] that a corporation's residence is at the place where its principal business is to be transacted, as set forth in its articles of incorporation. [C. C. 290 subd. 3.] This rule was

1. *Stats.* 1850 p. 347; 1853 pp. 92, 140, 176; 1854 p. 58; 1858 pp. 57, 264; 1859 p. 87.

2. *Stats.* 1850 p. 249; 1855 p. 171; 1860 p. 357; 1861 p. 531; 1862 p. 578.

badly shaken by two cases decided in The first of these, *California Southern R. So. Pac. Co.*, 65 Cal. 394, came to the Sup Court as an appeal from an order refusing to change the place of trial. The corporate principal place of business, according to its articles of incorporation, was San Francisco while the suit was begun in San Diego court. In denying the appeal—which denial, however, was based on other grounds—the court took occasion to say “we are not satisfied with *Jenkins v. California Stage Co.*, 22 Cal. 538. There is no law at present in California defining what is the place of residence of a corporation.” In the second case, *Thomas v. Placerville G. Q. M. Co.*, 65 Cal. 600, occurs the following: “The rule of *Jenkins v. California Stage Co.*, 22 Cal. 538, that ‘residence’ means ‘principal place of business’ is a rule of construction applicable only to domestic corporations; it means that the principal place of business mentioned in its articles of incorporation is its residence.” Three years later, in *Cohn v. Central Pac. R. R. Co.*, 71 Cal. 488, 12 Pac. 498, the court reversed itself, expressing unqualified approval of the rule of the *Jenkins* case, and saying that the dictum in the *California Southern Railroad* case, *supra*, is not to be followed, but that the true rule is that the “residence” at which a corporation is to be sued is its principal place of business. Though nothing is said about the point in the case, it is to be noted that the defendant therein was a foreign corporation and the

court granted its motion to change the place of trial from Los Angeles to San Francisco, which latter county was alleged to be its principal place of business. It would, therefore, seem that the rule of the Jenkins case applies also to foreign corporations. This is especially true in view of the constitutional provision considered in section 9 *post*. In expressing approval of the Cohn case, *supra*, the court, in *National Bank v. Superior Court*, 83 Cal. 491, 24 Pac. 157, took occasion to say that only on the point as to "residence" is the California Southern Railroad case, *supra*, overruled and that the rule is that all corporations have a "residence" whereat to be sued, at their principal place of business. The defendant in this case was again a foreign corporation, but no distinction was urged or made.

As thus laid down, the rule has been regarded as settled whenever the question subsequently arose, being dismissed in each case with the short remark that a "corporation's residence is at its principal place of business." *McSherry v. Penn. etc. Co.*, 97 Cal. 637, 32 Pac. 711; *Trezevant v. Strong Co.*, 102 Cal. 47, 36 Pac. 395; *Brady v. Times-Mirror Co.*, 106 Cal. 56, 39 Pac. 209.

SECTION 9—SAME.

It is made mandatory by the constitution [Art. XII, Sec. 14], that all corporations "organized or doing business in this state, other than religious, educational or benevolent, shall

have and maintain an office or place in this state for the transaction of its business, where transfers of stock shall be made, and in which shall be kept for inspection by every person having an interest therein, and legislative committees, books in which shall be recorded the amount of capital stock subscribed, and by whom; the names of the owners of its stock; and the amounts owned by them respectively; the amount of stock paid in, and by whom; the transfers of stock; the amount of its assets and liabilities, and the names and place of residence of its officers." *This* "place for the transaction of its business" as it is denominated in the constitution, *this* "place where its principal business is to be transacted" as it is called in section 290 of the Civil Code, *this* "principal place of business" as it is termed in section 321a of the Civil Code—three names for one place—*this* is the corporation's residence.

SECTION 10—CHANGE OF RESIDENCE.

Every corporation may change its principal place of business, from one place to another in the same county, or from one city or county to any other city or county within the state. [C. C. 321a.] Before such change is made, the consent, in writing, of the holders of two-thirds of the capital stock must be obtained and filed in the office of the corporation. When such consent is obtained and filed, notice of the intended removal or change must be published, at least once a week for three

successive weeks, in some newspaper published in the county wherein said principal place of business is situated, if there be one published therein; if not, in a newspaper of an adjoining county, giving the name of the county or city where it is situated, and that to which it is intended to remove it. A copy of such consent, certified by the secretary of such corporation, together with a certified copy of the resolution of the board of directors directing such publication, and an affidavit showing the due publication of such notice, must be filed in the office of the county clerk of the county to which such place of business is changed. From the time of filing such papers, the place of business of such corporation is deemed to have been changed to such county. C. C. 321a.

SECTION 11—CITIZENSHIP.

There will be occasion in the chapters on taxation [chapter VI, *post*], and power to take and hold property [chapter VII, *post*], to consider at length the corporation as a "resident" and a "citizen;" as to the latter it is sufficient here to quote from Justice Field's well known language in the Railroad Tax case, 8 Sawyer 238: "Corporations have never been considered citizens for any other purpose than the protection of the property rights of the corporators. All the guaranties of the United States constitution for the protection of the property of individuals may be

invoked for the protection of the property of corporations."

SECTION 12—RIGHT TO SUE AND BE SUED.

All corporations have the right to sue and are subject to be sued, in all courts, in like cases as natural persons. [Const. Art. XII, Sec. 4.] In *Baines v. Babcock*, 95 Cal. 581, 30 Pac. 776, it is said that the right to sue and the liability to be sued are inherent in every corporation. As it is recognized in law only by its name [Sec. 5, *supra*], the corporation can only sue or be sued in its corporate name. [*People v. Myers*, 15 Cal. 33, *Curtiss v. Murry* 26 Cal. 633.] The effect of misnomer in any instrument has already been considered. Section 5, *supra*.

When not sued in its corporate name, the corporation is not a party to the action. [*Curtiss v. Murry*, 26 Cal. 633.] A judgment against all the stockholders, in a suit in which the corporation, in its own name, is not a party, is not binding on the corporation, and its property cannot be levied on under such a judgment. *Bracia v. Nelson*, 42 Cal. 107.

Process against a corporation brings the corporation alone as a party into court. Neither the president, individual directors, secretary, or stockholders are parties, even if any of them verified the answer or signed the complaint. *Ex parte Hollis*, 59 Cal. 405.

Whether, in a particular case concerning rights, liabilities or property of a corporation, the corporation itself is a proper or necessary

party, depends on either of two circumstances, (a) the character of the right it is claimed defendant has invaded, or (b) the nature of the relief demanded. *Parrott v. Byers*, 40 Cal. 614, is an action by one claiming to be a stockholder against the directors individually, asking an injunction to restrain the defendants from working the corporation's mine for their own benefit and in hostility to the corporation, which it is alleged they are doing. To this complaint, one of the defenses was that the action should be brought by the corporation itself. In granting the injunction, the court said: "As no accounting is demanded, but only an injunction, the corporation is not a necessary party. Any stockholder can demand an injunction restraining directors from committing waste or destruction." Such acts are an injury to the trust owed to the stockholders. In *Chollar Mining Co. v. Wilson*, 66 Cal. 374, 5 Pac. 670, defendants, claiming to be a majority of the shareholders, had begun proceedings under statutes 1871-2, page 443, to oust the directors from office, and the corporation itself brings its bill demanding a writ of prohibition to command defendants to desist from their proceedings, on the ground that defendants are not a majority of the shareholders as the act requires, but only holders of a majority of the stock. The writ was granted, the court saying that the corporation is the proper party to ask for this writ.

The rules of pleading are the same for corporations as for individuals. San Francisco

Gas Co. v. S. F., 9 Cal. 453, compare *Applegarth v. McQuiddy*, 77 Cal. 408, 19 Pac. 692.

SECTION 13—THE RIGHT TO SUE QUALIFIED.

As a penalty for failure to file a copy of its articles of incorporation with secretary of state or to file with the county clerk of any county in which the corporation shall purchase, locate or hold property, a duly certified copy of the copy of the articles of incorporation filed in the office of the secretary of state, within sixty days after such purchase or location is made, the Civil Code [Sec. 299] provides that the corporation cannot maintain or defend any action or proceeding in relation to such property, its rents, issues or profits until such articles of incorporation and such certified copy are filed at the places directed. *California Savings & Loan Soc. v. Harris*, 111 Cal. 133, 43 Pac. 525, was an action to foreclose a mortgage on lands in M. county. Between the time of filing the answer and the time of filing an amended answer, in which was set up for the first time as a defense that plaintiff had not filed a copy of its articles in M. county as required by this section, plaintiff complied with the section by filing the necessary copy of its articles. The court held that it was filed in time, because the section merely means that until the certificate is filed, the right to maintain the action is suspended; and that it can be filed, so as to free the corporation from the penalty, at any time before a plea in abatement, setting up the fail-

ure to file, is filed. This decision means that the section is not directed at the power of corporations to sue, but is merely a regulation of that power in certain cases.¹ In *Savings & Loan Soc. v. McKoon*, 120 Cal. 177, 52 Pac. 305, another foreclosure case, it was held that this section does not apply at all to actions to foreclose mortgages. "As a foreclosure is only a means of securing a debt, and before foreclosure the plaintiff does not *hold* the land, but only has a lien thereon, this action is not within section 299 Civil Code. The section imposes a penalty and is to be strictly construed." This section, will again be considered when treating of the power of corporations to take and hold property. See Chap. VII, *post*.

SECTION 14—PLACE OF SUIT.

"A corporation or association may be sued in the county where the contract is made or is to be performed, or where the obligation or liability arises, or the breach occurs; or in the county where the principal place of business of such corporation is situated, subject to the power of the court to change the place of trial as in other cases." [Const. Art. XII, Sec. 16.] This constitutional provision has often been before the courts for interpretation. In *National Bank v. Superior Court*, 83 Cal. 491, 24 Pac. 157, this section is declared to be permissive, and not mandatory. Suits *may* be brought as there provided, but not all suits

1. Compare *Bank v. Calin*, 79-463, 21 Pac. 863.

must. Thus, the legislature had power to declare that proceedings under the right of eminent domain must be brought in the county where the land is situated [C. C. 1243, Nat. Bk. v. Sup. Ct., 83 Cal. 491, 24 Pac. 157], and that actions for the recovery of real estate must also be brought in the county where the land is situated. [Bailey v. Cox, 102 Cal. 333, 36 Pac. 650.] There is nothing in this section of the constitution opposed to such a construction, says the court in Baker v. Fireman's Fund Ins. Co., 73 Cal. 182, 14 Pac. 686.

Where the contract is "made" or the liability "arises" or the breach "occurs" are questions to be determined by the law of contracts or of torts, and have nothing to do with the law of corporations; for example, an action to set aside a sale of a plaintiff's stock to the corporation for delinquent assessment can only be brought in the county of the corporation's principal place of business [McSherry v. Penn etc. Co., 97 Cal. 637, 32 Pac. 711], for there the liability, if any, arose; while a libel suit against a newspaper corporation can be instituted in any county where the paper circulates. [Brady v. Times-Mirror Co., 106 Cal 56, 39 Pac. 209.] This, it is to be again remarked, depends on the law of libel, not on anything in corporation law, because it has been held that a corporation, under this section, must be sued in the county of its principal place of business and cannot, merely because it also does business in another

county, be sued in such other county. [Byrum v. Stockton C. H. & A. Works, 91 Cal. 657, 27 Pac. 1093.] Following the construction that this provision of the constitution is only permissive, and is governed by particular regulations for certain actions, if a natural person is joined as defendant with a corporation, plaintiff loses the benefit of this provision, and can only sue in the county where either resides. Brady v. Times-Mirror Co., 106 Cal. 56, 39 Pac. 209; The Griffin etc. Co. v. Magnolia etc. Co., 107 Cal. 378, 40 Pac. 495.

SECTION 15—PLACE OF TRIAL.

In the preceding section we have been dealing with the place for commencing the action; it remains to consider the place of trial and provisions for change of trial. We have already seen [Sec. 8 *supra*] that under section 395, Code of Civil Procedure, declaring "in all other cases, the action must be tried in the county where defendant resides" [395 C. C. P.], a corporation's "residence" is its principal place of business. [Cohn v. Central Pac. R. R. Co., 71 Cal. 488, 12 Pac. 498; Nat. Bank v. Superior Court, 83 Cal. 491, 24 Pac. 157; Trezevant v. Strong Co., 102 Cal. 47, 36 Pac. 395.] The corporation, however, has no absolute right to have a case *tried* in the county of its principal place of business. [Jager v. Cal. Bridge Co., 104 Cal. 542, 38 Pac. 413; Lakeshore, etc. Co. v. Modoc, etc. Co., 108 Cal. 261, 41 Pac. 472.] After suit has been begun in the proper county, a corporation has

no peculiar right or privilege as to change of trial. Only where a natural person would have the right to change the place of trial can a corporation do so. *Trezevant v. Strong Co.*, 102 Cal. 47, 36 Pac. 395.

SECTION 16—PRACTICE AND PROCEDURE.

An allegation that "plaintiff is a corporation organized and existing under the laws of this state" is a sufficient allegation to establish the right to sue [Cal. Nav. Co. *v.* Wright, 6 Cal. 258], but a complaint against a person by a name indicating that it is not a natural person, without averring that it is a corporation, or an artificial being capable of being sued, nor, if incorporated, under what laws or where, so that the court can see where jurisdiction of its person lies, is demurrable. [People *v.* Central Pac. Co., 83 Cal. 393, 23 Pac. 303.] The mere name under which it does business raises no presumption that it is an incorporated company, and certainly none that it was incorporated under the laws of this state. By naming it plaintiff does not show it to be incorporated in California. *Briggs v. McCullough*, 36 Cal. 542, and see *Applegarth v. McQuiddy*, 77 Cal. 408, 19 Pac. 692.

Service of the summons on a corporation can only be made as provided in section 411, Code of Civil Procedure, that is, by delivering a copy thereof to its president, or other head of the corporation, secretary, cashier, or managing agent. [Keener *v.* Eagle Lake Co., 110 Cal. 627, 43 Pac. 14; *O'Brien v. Shaw's*

Flat Co., 10 Cal. 342.] The rule thus announced has been on our statute books, in identical words, from the time of the Practice Act (1850), section 29. Service on any other person is not valid and does not bring the corporation within the jurisdiction of the court; thus it has been held that service on the person in possession of its property is bad [*Aiken v. Quartz Rock Co.*, 6 Cal. 187], while service on one who though elected president, had abandoned the business and left the county, but who was never removed, and had not resigned, though the duties of his office were performed by an acting president, was held good. [*Eel River N. Co. v. Struver*, 41 Cal. 616.] This case contains a dictum that service on the "de facto" president would also have been good.

All the other papers in a suit, required to be served on a corporation, can be served on the same parties on whom the summons must be served. *Pacific Coast R. R. Co. v. Superior Court*, 79 Cal. 103, 21 Pac. 609.

The sheriff's return that summons was served on "X" as president and "Y" as secretary, without any proof that those persons were such officers, is a prima facie proof of service and sufficient to support a default judgment. *Rowe v. Table Mt. Co.*, 10 Cal. 442.

Where all the officers of a corporation conceal themselves to escape service of an order to show cause in contempt proceedings, the order can be validly served on the attorneys of the corporation so as to bind it. [Golden

Gate, etc. Co. v. Superior Court, 65 Cal. 187, 3 Pac. 628.] Verification of a pleading by a corporation can be made by any officer thereof. C. C. P. 446. *In re Close*, 106 Cal. 574, 39 Pac. 1067.

SECTION 17—TITLE TO PROPERTY.

In many respects, the most important attribute of a corporation is that the title to its property is in the corporation itself, not in its members, or officers, singly or collectively. [*Gashwiler v. Willis*, 33 Cal. 11.] There is no surer test to determine whether the association is or is not a corporation, than to determine where the title to its property is lodged. If title is in the legal entity, that artificial person is a corporation of some kind. There are a number of interesting cases in California distinguishing a corporation from its members in regard to the ownership and possession of the corporate property. *Merrill Lodge v. Ellsworth*, 78 Cal. 166, 20 Pac. 400, is an application on the part of the lodge, duly incorporated under the laws of California, to restrain defendant, an agent of the national order of which the lodge is a member, from taking possession of its property. The constitution of the national order provides that upon the happening of certain events, the lodge is dissolved and that its property reverts to the order. The events named happened and defendant attempted to get possession of the lodge property. In granting plaintiff's demand for an injunction, the court said:

"Plaintiff being a corporation, title to its property and the right to possession is in plaintiff; the laws of California alone can dissolve it, and the charter of the national order has no bearing or effect whatever to declare the corporation dissolved. Until dissolved by law, the corporation can only act by law through its own officers, who are also entitled to possession and control of its property." *Gashwiler v. Willis*, 33 Cal. 11, a leading case, declares that the stockholders are not owners of the corporation's property and so cannot convey it away, nor can they authorize anyone to do it for them, even though such agent or agents be members of the board of directors. One who has conveyed land to a corporation, though he be a stockholder therein, has no legal estate in the lands so conveyed, either as an individual or as a stockholder [*Clark v. San Francisco*, 53 Cal. 306], even if the corporation be a mere naked entity, that has never done any business and never issued any stock. *Shorb v. Beaudry*, 56 Cal. 446.

SECTION 18—SAME.

In *Gorham v. Gilson*, 28 Cal. 480, the complaint alleges that plaintiff and defendant are the sole stockholders, that defendant by fraud has succeeded in having a mortgage on the corporation's property (a mine) foreclosed and has bought it in for himself and has made great profits out of it since, all of which was done by deceiving plaintiff, who now demands that defendant convey to him a one-

half interest in the property and account for one-half the profits. The court held that this complaint did not state a cause of action; that it proceeds on the theory that defendant is a trustee of the property for the plaintiff, which theory is wrong. Defendant got the property from the corporation, and if he holds as trustee at all, it is for the corporation not for plaintiff. *McCormick v. Springfield Fire & M. Ins. Co.*, 66 Cal. 361, 5 Pac. 617, holds "that a stockholder cannot recover on an insurance policy, taken out by him on the goods of the corporation, in which he describes himself as the sole, absolute and unconditional owner, and which policy contains a clause making it void if the assured was not the sole, absolute and unconditional owner; only the corporation was that." [It is to be noted that this case does not mean to declare anything as to whether a stockholder has *any* insurable interest in the corporate property.]

Nor has a stockholder any vendible interest in the "good will" of the corporation or of its business. *Merchants' Ad. Sign Co. v. Sterling*, 124 Cal. 429, 57 Pac. 468.

The power of a corporation to purchase, hold and alienate real and personal property [C.C. 354, sub. 9] will be discussed in a subsequent chapter. See Chap. VII, *post*.

CHAPTER III.

CREATION.

SEC. 19—BY GENERAL LAW.

SEC. 20—SAME.

SEC. 21—NO STATE AID.

SEC. 22—FORMAL REQUISITES.

SEC. 23—SUBSTANTIAL COMPLIANCE NECESSARY.

SEC. 24—PROOF OF INCORPORATION.

SEC. 25—DEFECTIVE INCORPORATION.

SECTION 19—BY GENERAL LAW.

The constitution of 1849 provided "that corporations may be formed under general laws, but shall not be created by special act" [Const. 1849, Art. IV, Sec. 31], and the same words are used in the present constitution. [Art. XII, Sec. 1.] Manifestly, this provision is not self-executing. At the first session of the legislature in 1850, a general act for the creation of corporations was passed, which act was repealed in part and supplemented by the act of 1853, which in turn gave way in 1872 to the provisions for incorporation contained in the codes. How far corporations created before the adoption of the codes were affected by them will be discussed in the next chapter on legislative control.

The first great question to arise in interpreting the foregoing constitutional restriction

was this: "Can the legislature confer special powers on a corporation already formed?" This question is answered in the negative by a dictum in *Low v. Mayor of Marysville*, 5 Cal. 214, but in the first case to be decided squarely on the point it was held that the legislature had such power [*Cal. Telegraph Co. v. Alta, etc. Co.*, 22 Cal. 398], the court saying "the only franchises that cannot be granted by special act are the privilege to be a corporation, and the privilege to do a banking business. [Const. 1849, Art. IV, Sec. 34; Const. 1879, Art. XII, Sec. 5.] All others can be granted by special act. The franchise to build a telegraph line (which was the franchise in dispute) is not a franchise to be a corporation. The legislature cannot create corporations by special act, but it can give corporations any privileges, exclusive or otherwise, and by special act." Though the decision in this case can be explained on other grounds,¹ the opinion can only be construed to mean that the constitutional prohibition applies merely to the bare "creation" of the corporation. It was not allowed to stand long as the law. In *French v. Teschemaker*, 24 Cal. 518, it is said that "an act of the legislature authorizing the formation of corporations without attaching to the corporators an individual liability, would be as obnoxious to the constitution as would be the creation of a

1. See opinion of McKinstry, J., in *Omnibus R. R. Co. v. Baldwin*, 57-160.

corporation by a special act, and the courts would be bound to hold that the persons organized under such an act had acquired none of the rights of a corporation." In *Oroville R. R. Co. v. Plumas Co.*, 37 Cal. 354, it is said corporations can only be created by general law, and in *San Francisco v. Spring Valley Water Works*, 48 Cal. 498, the *Telegraph Co.* case, *supra*, is expressly overruled. The facts in *San Francisco v. Spring Valley Water Works* are these: An act of the legislature—the so called "Ensign act," passed April 23, 1858—conferring upon Ensign and his associates the privilege of laying water pipes in the streets of San Francisco for the purpose of furnishing water to the inhabitants of the city, required that water should be furnished to the municipality free of charge, and further provided that the act shall not take effect unless Ensign and his associates incorporate under the general laws. The Spring Valley corporation subsequently acquired by purchase all the rights of the Ensign corporation. This action is brought by San Francisco to compel the Spring Valley Co. to furnish water to the municipality free of charge. The defense is that the Ensign act is unconstitutional in that it violates the provision that corporations shall not be created by special act. The city upholding the act, claimed upon the authority of the *Telegraph Co.* case, *supra*, that there is a difference between creating corporations and conferring privileges on them. The court held the act unconstitu-

tional. "This constitutional provision," it said "prevents the legislature from passing any act granting powers or privileges to a particular corporation, which are not enjoyed by all other like corporations formed under the same law, and it cannot pass any act limiting or burdening the rights or powers acquired by a particular corporation from the general law." "The grant to individuals on condition that they incorporate is a grant to the corporation, and the corporation takes only such rights as are derived from the general law concerning corporations, and subject only to such duties as it imposes. The legislature, by special act, cannot increase or decrease either."

SECTION 20—SAME.

Though the rule as thus announced was vigorously denounced by Judge Sawyer in *So. Pac. R. R. v. Orton*, 6 Sawyer 157, decided five years later, the *Spring Valley* case, *supra*, has been many times approved by the California Supreme Court and is in every respect law today. *Waterloo Turnpike Co. v. Cole*, 51 Cal. 381, decides that an act [Stat. 1857-8, p. 169] giving the supervisors of San Joaquin county power to grant franchises to turnpike corporations on certain terms, which terms are different from those of the general corporation law as to turnpike corporations, is unconstitutional and void. "An act giving certain powers to only a portion or a particular class of similar corporations is unconsti-

tutional." In addition to violating the "creation by special act" provision, it violates the rule that all laws of a general nature shall have a uniform operation. [Const. Art. I, Sec. 11.] *Omnibus R. R. Co. v. Baldwin*, 57 Cal. 160, declares that the legislature has no power by special act, to confer upon a corporation formed under the general laws, corporate powers and privileges not acquired by other corporations formed under the same general laws. *Slocum v. Bear Valley Co.*, 122 Cal. 155, 55 Pac. 403, declares unconstitutional an act [Stat. 1891, p. 195] giving a lien on the corporation's property to laborers employed by it, whose wages are payable weekly or monthly, because the liability is imposed only on those corporations that hire laborers by the week or month.¹ *Krouse v. Durbrow*, 127 Cal. 681, 60 Pac. 438, declares unconstitutional an act [Stat. 1880 p. 131] giving unregistered holders of certificates of stock in mining corporations the right to vote at elections of directors. In so far as electing directors, mining corporations are not different from other corporations and therefore this law is special legislation where a general law can be made applicable, and violates the constitution. [Art. IV, Sec. 25, sub. 33.] On the other hand, an act [March 25, 1885] authorizing surety corporations to be sole sureties is a general law and valid. [*Cramer v. Title etc.*, 72 Cal. 12, 12 Pac. 869.] The dictum in *Ex parte Fra-*

1. *Accord Ackley v. Black Hawk Co.*, 112 Cal. 42, 44 Pac. 330, and *Johnson v. Goodyear Min. Co.*, 127 Cal. 4, 59 Pac. 304, declaring unconstitutional Statute 1897, p. 231.

zier, 54 Cal. 94, upholding an act [Stats. 1877-8, p. 819] conferring on three named societies the power of examining and licensing practitioners of medicine is not in conflict with the rule, the origin of which has just been traced. Summarizing, the three constitutional provisions, (a) corporations shall not be created by special act [Art. XII, Sec. 1]; (b) all laws of a general nature shall have a uniform operation [Art. I, Sec. 11]; (c) the legislature shall not pass special laws in any case where a general law can be made applicable [Art. IV, Sec. 25, Sub. 33], not only prohibit the legislature from creating corporations by special act, but prohibit it from conferring privileges or imposing liabilities on corporations already existing, other than by a general law, applicable to all corporations of the same class. See also Art. IV, Sec. 25, Sub. 16, 19.

SECTION 21—NO STATE AID.

Before passing to a consideration of those acts which the general law has made formal requisites of incorporation, one other limitation on the power of the legislature to create corporations remains to be considered. The state shall not in any manner loan its credit, nor shall it subscribe to, or be interested in the stock of any company, association or corporation. [Const. Art. XII, Sec. 13.] A similar provision in the constitution of 1849 [Art. XI, Sec. 10] did not prevent the legislature from raising, by taxation, a fund of \$1,500,000 for the Central Pacific R. R. Co. to

aid in the construction of its railroad [*People v. Pacheco*, 27 Cal. 176]; the court saying that "no debt on the state's part was created and consequently no *credit* in the proper sense arose." Yet in *San Diego W. Co. v. City of San Diego*, 59 Cal. 517, this constitutional provision was considered ample to prevent the city from validly contracting to give property or pay money for the construction of the water works of a private corporation.

Out of an abundant caution, there is also inserted in our constitution, the following declaration: "The exercise of the right of eminent domain shall never be so abridged or construed as to prevent the legislature from taking the property and franchises of incorporated companies and subjecting them to public use the same as the property of individuals, and the exercise of the police power of the state, shall never be so abridged or construed as to permit corporations to conduct their business in such manner as to infringe the rights of individuals or the general well-being of the state." Const. Art. XII, Sec. 8.

SECTION 22—FORMAL REQUISITES.

We have seen that incorporation is a matter of right in California [Sec. 1 *supra*], available under general law. The question arises, who may form corporations and what acts it is necessary for such persons to do in order to be erected into a body corporate.

Private corporations may be formed by the voluntary association of any five or more per-

sons, a majority of whom must be residents of this state. [C. C. 285.] This applies to all corporations, no matter what their purpose, object, or kind. [People v. G. G. Lodge, etc., 128 Cal. 257, 60 Pac. 865.] The instrument by which the corporation is formed is called "Articles of Incorporation." [C. C. 289.] It must be subscribed to by five or more persons, a majority of whom must be residents of this state, and acknowledged by each before some officer authorized to take and certify acknowledgments of conveyances of real property. [C. C. 292.] It is not necessary to the validity of the corporation that all the original subscribers should sign the articles of incorporation; those that do act as agents for the others. [San Joaquin Co. v. Beecher, 101 Cal. 70, 35 Pac. 349.] The articles of incorporation must set forth [C. C. 290]: (1) The name of the incorporation; (2) the purposes for which it is formed; (3) the place where its principal business is to be transacted; (4) the term for which it is to exist not exceeding fifty years; (5) the number of its directors or trustees, which shall not be less than five, and the names and residence of those who are appointed for the first year; (6) the amount of its capital stock and the number of shares into which it is divided. [People v. Leonard, 106 Cal. 302, 39 Pac. 617.] (7) If there is a capital stock, the amount actually subscribed and by whom.

Upon filing the articles of incorporation in the office of the county clerk of the county

in which the principal business of the company is to be transacted, and a copy thereof, certified by the county clerk, with the secretary of state, the secretary of state must issue to the corporation, over the great seal of the state, a certificate that a copy of the articles containing the required statement of fact has been filed in his office and *thereupon*¹ (the italics are ours) the persons signing the articles and their associates and successors shall be a body politic and corporate by the name stated in the certificate, and for the term of fifty years, unless it is in the articles of incorporation otherwise stated, or otherwise specially provided for certain classes of corporations. [C. C. 296.] These are the formal requisites for creating a corporation in California. [Stockton etc. Co. v. Stockton etc. Co., 51 Cal. 331.]

When corporations were created by special act, as at common law, an acceptance of the charter by the persons incorporated was necessary to complete the creation of the corporation; but this rule has no application to corporations formed under general laws, like those of this state, where the incorporators are the acting party in creating the corporation. [Spring Valley v. San Francisco, 22 Cal. 434.] When these instruments are executed, filed and certified as required, the corporation at that instant comes into legal existence. Its corporate life is then complete; nothing more need be done, and it can only

1. See next section.

be destroyed by some subsequent act of forfeiture. *Martin v. Deetz*, 102 Cal. 55, 36 Pac. 368.

SECTION 23—SUBSTANTIAL COMPLIANCE NECESSARY.

The process of creating a corporation being an artificial one, all the requirements mentioned in the general law are an essential part of that birth by which an "imaginary, invisible, intangible, legal entity is brought into contemplative existence" [*Martin v. Deetz*, 102 Cal. 55, 36 Pac. 368]. All that the statute requires the certificate shall state, is an essential of incorporation, and without a substantial compliance therewith, no corporation is created. [*Harris v. McGregor*, 29 Cal. 125.] Filing the articles of incorporation in the county of its principal place of business has always been a condition precedent to the corporation's existence [*Martin v. Deetz*, 102 Cal. 55, 36 Pac. 368; *Mokelumne etc. Co. v. Woodbury*, 14 Cal. 424], but until the word "whereafter" subsequently changed to "*whereupon*" [Amendments 1873-4, p. 199], was inserted in section 290 of the Civil Code, filing a certified copy with the secretary of state was not. In *Mokelumne Hill Co. v. Woodbury*, 14 Cal. 424, the court said that filing with the secretary of state was not a prerequisite, but simply an act required to be done, failure to do which furnished a cause for forfeiture, if the state should institute such proceedings. Judge

Hoffman in the United States District Court took the same view. [Hyde v. Doe, 4 Sawyer, 133.]

That filing the certified copy with the secretary of state is now a condition precedent to the creation of the corporation and that the secretary has no authority to issue the certificate until all the forms have been complied with, was expressly held in two recent cases. Wall v. Mines, 130 Cal. 27, 62 Pac. 386; People v. G. G. Lodge etc., 128 Cal. 257, 60 Pac. 685.

It is important to determine whether an act required to be done at the creation of the corporation is a condition precedent to existence, or only a cause of forfeiture; because if the former, the corporation has not been created, if the latter it is a valid corporation as to all the world, except in a direct proceeding by the state to have the forfeiture decreed. [C. C. 358.] In Ex parte Spring Valley W. W., 17 Cal. 132, the articles of incorporation stated San Francisco is "the place of business," while they should have said "the principal place of business." This was held merely a technical error and the court refused to declare the charter void on any such ground. In Roman Catholic Orphan Asylum v. Abrams, 49 Cal. 455, articles signed by all the members and not by the trustees [Stat. 1850, p. 273] were sustained. In People v. S. & V. R. R., 45 Cal. 306, a certificate stating that ten per cent. had been paid in in good faith, but did not use the words *in cash* [Stat. 1861, p. 607], was upheld,

the court saying that a literal compliance is not necessary.

On the other hand, while only a substantial compliance with the statute of creation is necessary, where the act required to be done, no matter how small, is not done at all, there is no such compliance. There is a difference between not doing an act at all, and doing as directed, but not literally. Therefore, it has been held that articles signed by only four persons [*People v. Montecito Water Co.*, 97 Cal. 276, 32 Pac. 236]; that articles of an insurance corporation [C. C. 419] failing to state that over \$100,000 had been subscribed [*People v. Flint*, 64 Cal. 49, 28 Pac. 495], and that a certificate of incorporation verified by a number of persons less than five [*People v. G. G. Lodge, etc.*, 128 Cal. 257, 60 Pac. 865], did not create corporations. Besides the general provisions [C. C. 290, 296] for incorporation [*People v. G. G. Lodge, etc.*, 128 Cal. 257, 60 Pac. 865], special provision is made in other sections, relating to certain kinds of corporations, for additional facts to be stated in their articles of incorporation. [C. C. 290, 296, *People v. G. G. Lodge, etc.*, 128 Cal. 257, 60 Pac. 865.] These sections of the codes will all be found in full in part II, *post*.

SECTION 24—PROOF OF INCORPORATION.

Incorporation can be proved by a certified copy of the certified copy of the articles required to be filed with the secretary of state. Such copy is not secondary evidence, but is

by law, made equal to the original as evidence. [*Boston Tunnel Co. v. McKenzie*, 67 Cal. 485, 8 Pac. 22; *Fresno, etc. Co. v. Warner*, 72 Cal. 379, 14 Pac. 37.] This is the judicial interpretation of the provision of section 297 of the Civil Code which reads as follows: "A copy of any articles of incorporation filed in pursuance of this chapter and certified by the secretary of state, or by the county clerk of the county where the original articles shall have been filed, must be received in all the courts of this state, and other places, as prima facie evidence of the facts therein stated." The same construction had been put on the provisions of an act giving corporations power to consolidate,¹ in the case of *Vance v. Kohberg*, 50 Cal. 346, wherein the court said: "On reading the whole statute, we think it clear that the articles filed with the secretary of state constitute an original and therefore a certified copy must be received as good evidence. See C. C. P. 1919.

The statements made in the articles of incorporation are the statements of the corporation, and if such statements are incorrect, the corporation is estopped to impeach them. *Monterey, etc., R. R. Co. v. Hildreth*, 53 Cal. 123.

SECTION 25—DEFECTIVE INCORPORATION.

We have seen in chapter II, *supra*, that there are certain attributes possessed by cor-

¹ Statutes 1861, p. 607, section 40, to which section 473 C. C. is substant similar.

porations, such as the power and privilege of suing and being sued in its own name, and the power to take and hold property in its own name, which do not belong to unincorporated associations. We have also seen how the artificial being, called a corporation, is created [Secs. 19 and 20, *supra*,] and that the failure to perform those acts not made essentials of incorporation can only be taken advantage of by the state.

One of the favorite defenses in suits to which a corporation is a party is to deny that it is a corporation. The injustice done by allowing persons to escape their just debts and liabilities to a corporation by proof that it was defectively organized gave rise at common law to the doctrine of *de facto* corporations. How a *de facto* corporation comes into being, and what its powers and liabilities are, will be treated in a special chapter devoted to that subject. [Chapter XXII, *post*.] *De facto* corporations are legal (*de jure*) corporations for all purposes except a direct action by the attorney-general of the state to enjoin them from acting as corporations. *Rondell v. Fay*, 32 Cal. 354.

In addition to this common law protection, there is, in this state, a statute declaring that the due incorporation of a company claiming in good faith to be a corporation, and doing business as such, shall not be inquired into collaterally in any private suit to which such company shall be a party [Stats. 1861, p. 110], and this statute is now embodied in sec-

tion 358, Civil Code. What is the effect of this law on attacks directed at due incorporation?

In the first place, though the act relates to all corporations, whether formed before or after its passage [*Pac. Bank v. De Ro*, 37 Cal. 538], and provides that *due* incorporation cannot be inquired into, it does not mean that no inquiry can be made. [*Martin v. Deetz*, 102 Cal. 55, 36 Pac. 368.] To prove that the corporation is not such, either *de jure* or *de facto*, is always a defense [*Oroville etc. R. R. Co. v. Plumas Co.*, 37 Cal. 354]; for example, a deed to such a grantee is a nullity. [*Wall v. Mines*, 130 Cal. 27, 62 Pac. 386.] The true rule appears to be that announced in a dictum in *Fresno Canal Co. v. Warner*, 72 Cal. 379, 14 Pac. 37: "In all actions, not founded on contract made between the parties, the existence of the alleged corporation, if put in issue, must be proved." We shall see [Chap. XXII, *post*] that one who contracts with a corporation is estopped to deny its existence; which doctrine explains the exception contained in the above rule. Like most rules regulating a difficult subject, this one requires explanation. When it states that "existence * * * must be proved," it means existence *de jure* or *de facto*, for on proof that it has a "de facto" existence, a corporation defeats all collateral attacks on its right to exercise the attributes of a corporation. *People v. Frank*, 28 Cal. 507; *Stockton etc. Co. v. Stockton etc. R. R. Co.*, 45 Cal. 680; *Bakersfield Hall Asso. v. Chester*,

55 Cal. 98; *People v. Barrie*, 49 Cal. 342; *People v. Leonard*, 106 Cal. 302, 39 Pac. 617; *People v. Dole*, 122 Cal. 486, 55 Pac. 481.

Summarizing, the results of the judicial interpretation of the principle that the due incorporation of any company cannot be collaterally attacked, we find it to mean: (a) A collateral attack is one made in any proceeding, other than one brought by the attorney-general of the state to restrain the corporators from usurping the franchise to be a corporation. [*S. P. R. R. Co. v. R. R. Comr's*, 78 Fed. 236 (1896), *McKenna, J.*] (b) Such an attack can be made by any one, who is not estopped therefrom because of having contracted with the corporation as such. (c) But that the attack will not be successful, if the corporation proves that it has at least a *de facto* existence. *Los Angeles Holiness Band v. Spiers*, 126 Cal. 541, 58 Pac. 1049, citing *Rondell v. Fay*, 32 Cal. 361; *Stockton etc. Co. v. Stockton etc. R. R. Co.*, 45 Cal. 680; *Bakersfield Hall Asso. v. Chester*, 55 Cal. 101; *People v. La Rue*, 67 Cal. 530, 8 Pac. 84; *Golden Gate Co. v. Hendy Works*, 82 Cal. 186, 23 Pac. 45.

It should be noted in this connection that the section of the Civil Code, relating to the amendment of articles of incorporation, provides that nothing it contains cures or amends any defect existing in any original articles of incorporation filed prior, where such articles did not set forth the matters required to make the same valid at the time of filing. C. C. 362.

CHAPTER IV.

LEGISLATIVE CONTROL.

SEC. 26—ALTERATION OF CHARTER.

SEC. 27—SAME.

SEC. 28—METHOD OF ALTERATION.

SEC. 29—REORGANIZATION UNDER THE CODE.

SEC. 30—VISITORIAL POWER OF THE STATE.

SEC. 31—CONSOLIDATION.

SEC. 32—EXTENSION.

SECTION 26—ALTERATION OF CHARTER.

Ever since the United States Supreme Court in the famous Dartmouth College case decided that the charter of a corporation was a contract within the meaning of the provision, prohibiting a state from passing any law impairing the obligation of contracts [Art. I, Sec. 10, U. S. Const.], the accepted mode for a state to retain control over the corporations of its creation has been to provide in the charter that it may be amended or repealed. *San Fran. v. Spring Valley W. W.*, 48 Cal. 493.

In the section of our state constitution which declares that corporations may be formed under general laws, it is provided that "all laws, now in force in this

state concerning corporations, and all laws that may be hereafter passed pursuant to this section, may be altered from time to time or repealed." [Art. XII, Sec. 1.] A similar provision was contained in the constitution of 1849 [Art. IV, Sec. 31], and was inserted in the Civil Code. Sec. 404, C. C., formerly Sec. 384.

Judicial construction of the power reserved to the legislature by the above section is not wanting. "The reservation in the general law of the right to amend, alter, or repeal, places under legislative control all rights, privileges and immunities derived through the charter direct from the state; but the rights and interests acquired by the corporation not constituting a part of the contract of incorporation, stand upon a different footing. There is no power to interfere with contracts the corporation may make. When a contract has been made or property acquired, the contract is as inviolable and the property right as sacred as in the case of a natural person. However, the *right* to sue and be sued by name, the *right* to use a corporate name and seal, the *right* to acquire property and the *right* to contract are all given by the charter.¹ and are subject to legislative control."

The foregoing language was used by Hoffman, J., in Parrott's Chinese case, 6 Saw. 349, in deciding that the provision of the

1. These are all attributes of corporations. Chapter II, *supra*.

state constitution forbidding corporations to employ Chinese [Art. XIX, Sec. 2], and sections 178 and 179 of the Penal Code passed in pursuance thereof, violated the United States constitution [Art. I, Sec. 10] and the treaty with China.

SECTION 27—SAME.

The well-known case of *Spring Valley Water Works v. San Francisco*, 61 Cal. 3, which went to the United States Supreme Court, was decided on this provision of the state constitution. The water company's charter provided that the water rates should be fixed by a board of commissioners, consisting of five persons, two selected by the corporation, two by the city, a fifth selected by the four thus appointed. Then article XXII, section 1, of the constitution of 1879, changed the mode of fixing water rates, and the legislature enacted accordingly. [Stats. 1881, p. 54.] One of the San Francisco appointed commissioners died, and the city refusing to appoint another, the company demanded a writ of mandamus to compel it to do so, alleging that the laws changing the mode of fixing the rates violated article I, section 10 of the United States constitution. The state Supreme Court held that the change was constitutional, saying that though the charter is a contract between the state and the corporation, the state reserves power to amend, alter or repeal, and the water company took it subject to this power. "This power, it is true, can only be exercised so as not to take

away vested or property rights, but the change here complained of only affected a certain public franchise held by the corporation and that franchise to furnish water is not a contract; it is within the police power." In affirming this case the United States Supreme Court [*Spring Valley Water Works v. Schotler*, 110 U. S. 347] said the organization of the plaintiff was not a business arrangement with the state, but simply the grant of a franchise to exist as a corporation and to do certain things, that it was all subject to alteration or repeal, and that the company's power to fix rates grew out of the grant from the state and is therefore subject to change.¹ *McGowan v. McDonald*, 111 Cal. 57, 43 Pac. 418, says (dictum) that the stockholder's statutory liability could be altered or repealed under this provision without violating the United States constitution.

Another check on the legislative power over corporations is the rule, now settled, that the fourteenth amendment to the United States constitution that a state cannot deny to any person the equal protection of its laws applies to and protects corporations.² Therefore, a statute [1897 p. 231] giving liens to laborers employed by corporations, is unconstitutional. *Johnson v. Goodyear Min. Co.*, 127 Cal. 4, 59 Pac. 304.

Over the internal affairs, however, of the

¹ See also *People v. Coon*, 25 Cal. 635.

² *Johnson v. Goodyear Min. Co.*, 127 Cal. 4, 59 Pac. 304, citing *Santa Clara County v. So. Pac. R. R. Co.*, 118 U. S. 396; see a dictum contra in *Central Pac. Co. v. Board of Equalization*, 60 Cal. 35.

corporations of the state and over the regulation of corporate management, the legislature has full control; accordingly an act [Stats. 1880 p. 400] imposing a penalty on the directors of mining corporations for failure to post reports is constitutional. *Miles v. Woodward*, 115 Cal. 308, 46 Pac. 1076.

SECTION 28—METHOD OF ALTERATION.

It is quite as competent for the legislature to confer additional powers, privileges and immunities by a subsequent act as by the original act under which the corporation was formed, provided only it be done by general law. *People v. Perrin*, 56 Cal. 345.

"Any corporation may amend its articles of incorporation by a majority vote of its board of directors or trustees, and by a vote or written assent of the stockholders representing at least two-thirds of the subscribed capital stock of such corporation, or the written assent of a majority of the members if there is no capital stock; and a copy of such articles of incorporation as thus amended, duly certified to be correct by the president and secretary of the board of directors or trustees of such corporation, must be filed in the office where the original articles were filed, and a copy thereof, certified by the county clerk, must be filed with the secretary of state; and from the time of so filing such copy of amended articles of incorporation, such corporation has the same powers, and it and the members or stockholders thereof are thereafter

subject to the same liabilities as if such amendment had been embraced in the original articles of incorporation; the time of the existence of such corporation must not be by such amendment extended beyond the time fixed in the original articles of incorporation; such original and amended articles of incorporation must together contain all the matters and things required by the law under which the original articles of incorporation were executed and filed. If the assent of two-thirds of said stockholders, or of the majority of members where there is no capital stock, to such amendment has not been obtained, a notice of the intention to make such amendment must first be published in some newspaper published in the county in which the principal place of business of the corporation is located, for fifteen days if in a daily, or five successive issues if in a weekly newspaper, before the filing of the proposed amendment." C. C. 362.

SECTION 29—REORGANIZATION UNDER THE CODES.

The code contains a complete scheme for the reorganization under it of California corporations created prior to its adoption in 1872, which scheme is as follows: "Any corporation existing on the first day of January, one thousand eight hundred and seventy-three, formed under the laws of this state, and still existing, which has not already elected to continue its existence, under the provisions

of this code applicable thereto, may, at any time hereafter, make such election by the unanimous vote of all its directors, or such election may be made at any annual meeting of the stockholders, or members, or at any meeting called by the directors expressly for considering the subject, if voted by stockholders representing a majority of the capital stock, or by a majority of the members, or may be made by the directors upon the written consent of that number of such stockholders or members. A certificate of the action of the directors, signed by them and their secretary, when the election is made by their unanimous vote, or upon the written consent of the stockholders or members when such election is made at any such meeting, signed by the chairman and secretary of the meeting, and a majority of the directors, must be filed in the office of the clerk of the county where the original articles of incorporation are filed, and a certified copy thereof must be filed in office of the secretary of state; and thereafter the corporation shall continue its existence under the provisions of this code which are applicable thereto, and shall possess all the rights and powers, and be subject to all the obligations, restrictions, and limitations prescribed hereby." [C. C. 287.] Reorganizing under this section does not create a new corporation, but continues the existence of the old corporation, modifying its charter. [People v. Pfister, 57 Cal. 532.] The legislature might have provided that all corporations previously

created shall be subject to the codes—how far such a provision would be effective, we have already considered—[Sec. 26, 27, *supra*,] but it did not do so. It declared [C. C. 288] that “no corporation formed or existing before twelve o’clock noon, of the day upon which this code takes effect is affected by the provisions of part IV of division first of this code [general corporation law], unless such corporation elects to continue its existence under it as provided in the previous section; but the laws under which such corporations were formed and exist are applicable to all such corporations, and are repealed subject to the provisions of this section.” It would seem to be reasonably clear that this section means, as was held in *Estate of Eastman*, 60 Cal. 308, that corporations formed before the codes have the powers conferred by their act of incorporation and that until they assent by re-incorporating under the code,—their charter is not changed or amended by the codes; but doubt was thrown on this interpretation by a dictum in *Market St. R. R. Co. v. Hellman*, 109 Cal. 571, 42 Pac. 225, and by the necessary inference from the decision in *McGowan v. McDonald*, 111 Cal. 57, 43 Pac. 418. In the *Hellman* case, it is announced that “this section [Sec. 288] says the laws under which (pre-existing) corporations were *formed* or *exist* are not repealed by the code and another section [Sec. 20] says all other laws are. The result is this: Corporations existing before the code are still subject as to their *formation* and

existence to the law of their charter, but in all other respects are governed by the codes. To hold otherwise would be to make the whole of part IV of the Civil Code unconstitutional as special legislation."

In the McGowan case (*supra*) it was said that the section of the code [C. C. 322] imposing a liability on stockholders for the debts of the corporation applied to all corporations, whether organized before the codes or not, because this liability is no part of the "*creation or formation* of the corporation," the inference being that the codes regulate all matters other than the bare creation or formation of such corporations, even though they have not elected to reorganize. This case, also, approves of the Hellman case (*supra*). In *Murphy v. Pacific Bank*, 119 Cal. 334, 51 Pac. 317, decided in 1897, the above dictum in the Hellman case confining section 288 to "*mere corporate existence*" is repudiated and the meaning of this section announced to be that "if a corporation elects to continue under it, it is subject to the provisions of the code, but if it does not so elect, no provisions of the code apply to it"—which is only a re-establishment of the early rule. *Estate of Eastman, supra*.

Of course, nothing in the power to reorganize enables a corporation to defraud its creditors [C. C. 404]; nor can a corporation by a feigned re-incorporation as a new company and a transfer of its property without consideration, place it beyond the reach of

creditors. *S. F. & N. P. R. R. Co. v. Bee*, 48 Cal. 398.

As a house-cleaning, the constitution of 1879, article XII, section 6, provided that "all existing charters, grants, franchises, special or exclusive privileges, under which an actual and bona fide organization shall not have taken place, and business have been commenced in good faith, at the time of the adoption of this constitution, shall hereafter have no validity." There was nothing in the constitution of 1849 prohibiting the granting of exclusive franchises, but franchises granted were not construed to be exclusive unless they were made so in terms. *Indian Canyon Road Co. v. Robinson*, 13 Cal. 519.

SECTION 30—VISITORIAL POWER OF THE STATE.

The attorney-general or district attorney, whenever and as often as required by the governor, must examine into the affairs and condition of any corporation in this state, and report such examination, in writing, together with a detailed statement of facts, to the governor, who must lay the same before the legislature; and for that purpose the attorney-general or district attorney may administer all necessary oaths to the directors and officers of any corporation, and may examine them on oath in relation to the affairs and conditions thereof, and may examine the books, papers and documents belonging to such corporation, or appertaining to its affairs and conditions. [C. C. 382.] The

legislature, or either branch thereof, may examine into the affairs of any corporation in this state at all times; and, for that purpose, any committee appointed by the legislature, or either branch thereof, may administer all necessary oaths to the directors, officers and stockholders, and may examine them under oath, and may examine the safes, books, papers and documents belonging to the corporation, and compel the production of all keys, books, papers and documents by summary process, to be issued on application to any court of record or any judge thereof, under such rules and regulations as the court may prescribe. [C. C. 383.] It is a crime punishable by imprisonment in the state prison for not less than three nor more than ten years to deceive any of the above named investigators by means of false or forged books, papers, vouchers or other instruments. P. C. 558.

The visitorial power of the state over all corporations, domestic and foreign, has thus been declared to be exercisable only by the legislature itself, by means of a judicial investigation, or by the attorney-general at the order of the governor of the state. In whatever way exercised, directly or by delegation, it is but the administration of the legislative power of the state. *State Investment Co. v. Superior Court*, 101 Cal. 135, 35 Pac. 549.

A special provision of the Political Code, section 474, authorizing the attorney-general or counsel employed by him, in searching for

escheated property, to examine the books and papers of a corporation, has been held to allow such examination only under supervision and an order of the Superior Court. C. C. P. 1269; *People v. Hibernia etc. Society*, 72 Cal. 21, 13 Pac. 48.

SECTION 31—CONSOLIDATION.

When we speak of the consolidation of corporations we mean one of two things—either, that one of the constituent corporations has been dissolved and its assets and liabilities taken over by the other; or, that both the constituent corporations have been dissolved and a new one created, taking over their assets and liabilities. How a corporation may be dissolved, when, by whom and the effect of dissolution will be treated of in the next chapter; being concerned in this section with the power of dissolution only as a step in the process of consolidation.

The legislature has expressly given the power to consolidate to colleges [C. C. 652, 653], to savings banks, to mining corporations [C. C. 361], to railroad corporations [C. C. 473], including street railroads [C. C. 510], and to co-operative business corporations [C. C. 653], but has not expressly given it to corporations in general [C. C. 354, 355], except in so far that it has provided a method by which all corporations can voluntarily dissolve. See chapter V, *post*.

The only statement in our books as to the power of corporations in general to dissolve is

contained in *Market Street Ry. Co. v. Hellman*, 109 Cal. at p. 585, 42 Pac. 225, and that statement is only a declaration that under the power to alter or repeal the charter, the legislature *can* amend the charter so as to give the corporation and a majority of the stockholders power to consolidate against the wish of a minority. It would seem to be clear that the power to consolidate, as distinguished from the power to dissolve, is not possessed by California corporations in general [C. C. 355], that those corporations to which it is granted can only exercise it in the mode prescribed [see Chap. VII, *post*], and that the results will be only those declared in the grant. [*Johnson v. Maine Hospital*, 2 Cal. 319.] The various statutes granting power to certain corporations to consolidate will be found in part II, *post*.

As the grant to railroad corporations [C. C. 473] is typical of all the others, an outline of its provisions and a statement of what the courts have said in construing it will be given here. Any railroad corporation incorporated under the laws of California may consolidate with one or more railroad corporations, domestic or foreign, its capital stock, properties, roads, equipments, adjuncts, franchises, claims, demands, contracts, agreements, obligations, debts, liabilities and assets of every kind and description, upon such terms and in such manner as may be agreed upon by their respective boards of directors; provided, no such consolidation shall take effect

until the same shall have been ratified and confirmed in writing by the stockholders holding three-fourths of the subscribed capital stock of their respective corporations. The section then provides for the preparation and filing of "articles of incorporation and consolidation," and the formal requisites of such articles and declares that the effect of such consolidation is to vest in the new corporation all the assets and liabilities of the constituent corporations; that they have become extinct and that the new corporation with all its property is liable to the creditors of each of the component corporations. See *Smith v. Los Angeles Ry. Co.*, 98 Cal. 210, 33 Pac. 53.

In *Market Street Ry. Co. v. Hellman*, 109 Cal. 571, 42 Pac. 225, it is said that the consolidated corporation became a distinct entity—a new corporation, and as such might be organized for fifty years irrespective of the terms of existence of the constituent corporations [See *Cal. etc., Co. v. S. P. R. R. Co.*, 67 Cal. 59, 7 Pac. 123; *Chapin v. Broder*, 16 Cal. 404], and the case also contains a dictum, at p. 596, that "a creditor may not prevent a consolidation of corporations, but he may insist that the property of the debtor corporation may remain subject to his demands, and that its stockholders shall be answerable to him for their statutory liability." The articles of consolidation themselves constitute new articles of incorporation, are originals as evidence [*Vance v. Kohlberg*, 50 Cal. 346] and

the parties named therein are properly called directors. Cal., etc., Co. v. S. P. R. R. Co., 67 Cal. 59, 7 Pac. 123.

SECTION 32—EXTENSION.

The persons complying with the formal requisites of incorporation are erected into a body politic and corporate for fifty years unless otherwise stated or provided. [C. C. 296.] "Every corporation formed for a period less than fifty years, unless there be some special inconsistent provision in the code [C. C. 403] may, at any time prior to the expiration of the term of its corporate existence, extend such term to a period not exceeding fifty years from its formation. Such extension may be made at any meeting of the stockholders or members, called by the directors expressly for considering the subject if voted by stockholders representing two-thirds of the capital stock; or by two-thirds of the members; or may be made upon the written assent of two-thirds of the members or of stockholders representing two-thirds of the capital stock. A certificate of the proceedings of the meeting upon such vote, or upon such assent, must be signed by the chairman and secretary of the meeting and a majority of the directors, and be filed in the office of the county clerk, where the original articles of incorporation were filed, and a certified copy thereof in the office of the secretary of state, and thereupon the term of the corporation is extended for the specified period." C. C. 401.

Beyond extending the life of a corporation to the full period of fifty years which the incorporators might have secured in their original articles, the legislature has no power of extension. Constitution, Art. XII, Sec. 7.

CHAPTER V.

DISSOLUTION.

SEC. 33—DISSOLUTION IN GENERAL.

SEC. 34—VOLUNTARY DISSOLUTION—HOW ACCOMPLISHED.

SEC. 35—WHO CAN OBJECT.

SEC. 36—INVOLUNTARY DISSOLUTION—METHOD.

SEC. 37—CAUSES OF FORFEITURE.

SEC. 38—DEFENSES OR WAIVER OF GROUNDS.

SEC. 39—PARTIES AND PROCEDURE.

SEC. 40—FORM OF JUDGMENT.

SEC. 41—CONTROL OF LIQUIDATION.

SEC. 42—DISPOSITION OF PROPERTY.

SEC. 43—EFFECT OF EXPIRATION OF TERM OF EXISTENCE.

SECTION 33—DISSOLUTION IN GENERAL.

No charter was ever grantable in California that could not be altered from time to time, or repealed. [Const. 1849, Art. IV, Sec. 31; Const. 1879, Art. XII, Sec. 1.] The power of the legislature to take away the franchise of being a corporation is plenary, subject only to the further constitutional provision that the legislature can only exercise this power by general laws. If there were no statutes on the subject, a corporation could, on surrender of its franchise and transfer of all its property, declare itself dissolved and it would be dissolved [People v. College of Cal., 38 Cal. 166]; or after ceasing to do business for an indefi-

nite period, the courts could declare that it had abandoned its franchise to be a corporation, and judicially declare it dissolved. But there are statutes in California concerning the dissolution of corporations [C. C. 399], statutes that provide for voluntary and involuntary dissolution, the mode of procedure and the effect of such proceedings, which statutes are expressly declared to be applicable to all corporations, unless specially excepted. [C. C. 403.] There are thus the formal requisites of dissolution, just as there are the formal requisites of creation, and similarly they are exclusive. A corporation cannot be dissolved in any way, other than as provided in the codes [People v. College of Cal., 38 Cal. 166; Merrill Lodge v. Ellsworth, 78 Cal. 166, 20 Pac. 400]; a corporation cannot dissolve itself in any other way, nor can a court dissolve it in any other way. [Nightingale v. Milwaukee Fur. Co., 71 Fed. 234 per Ross J.] The sale of all its property does not dissolve the corporation [Miner's Ditch Co. v. Zellerbach, 37 Cal. 543; Sullivan v. Triunfo, etc. Co., 39 Cal. 459], nor the division of any or all its property among its members [Kohl v. Lilienthal, 81 Cal. 372, 22 Pac. 689]; there are other penalties for that [C. C. 309, Chap. XIV, *post*]; nor does the happening of those events, which are a cause of forfeiture, dissolve the corporation. "A court cannot treat it as already dissolved, because its condition or business arrangements are such that it will be necessary or proper for it (or others) to institute proceed-

ings for its dissolution." [Sullivan v. Triunfo, etc. Co., 39 Cal. 459.] Until the formal requisites for dissolution are complied with, its corporate life does not cease. People v. Los Angeles etc. Co., 91 Cal. 338, 27 Pac. 673.

SECTION 34—VOLUNTARY DISSOLUTION—HOW ACCOMPLISHED.

Any corporation may be dissolved by the Superior Court of the county where its principal place of business is situated, upon its voluntary application for that purpose. [C. C. P. 1227.] The application must be in writing and must set forth: (1) That at a meeting of the stockholders or members called for that purpose, the dissolution of the corporation was resolved upon by a vote of two-thirds of the members or of the holders of two-thirds of the subscribed capital stock; (2) that all claims and demands against the corporation have been satisfied and discharged. [C. C. P. 1228.] The application must be signed by a majority of the board of trustees, directors, or other officers having the management of the affairs of the corporation, and must be verified in the same way as a complaint in a civil action. C. C. P. 1229.

Upon filing the application, the clerk must give notice of the same for such time as the court may order, but not less than thirty nor more than fifty days, by publication in some newspaper published in the county; and if there is none such, then by notices posted in

three of the principal public places in the county. C. C. P. 1230.

After the time for publication has expired, the court may, upon five days' notice to the persons who have filed objections or without further notice, if no objections have been filed, proceed to hear and determine the application, and if all the statements therein made are shown to be true, must declare the corporation dissolved. [C. C. P. 1232.] From the judgment thus given, an appeal may be taken to the Supreme Court, as from other judgments of the Superior Court; the judgment roll consisting of the application, notices, and proof of publication, objections (if there be any) and declaration of dissolution. C. C. P. 1233.

SECTION 35—WHO CAN OBJECT.

At any time before the expiration of the time of publication (see preceding section) any person may file his objections to the application. [C. C. P. 1231.] Any creditor can, therefore, prevent voluntary dissolution, because he can deny the allegation that all its claims and demands have been paid, which fact is a prerequisite to such a judgment. C. C. P. 1228, 1232.

These sections, regulating the mode of voluntary dissolution have never been construed by the Supreme Court, other than to say they are exclusive. See section 34, *supra*.

SECTION 36—INVOLUNTARY DISSOLUTION.— METHOD.

As the mode of dissolution, voluntary or involuntary, has been provided by statute, a corporation cannot be dissolved in any other way. *Kohl v. Lilienthal*, 81 Cal. 378, 22 Pac. 689.

A corporation can only be involuntarily dissolved at the suit of the state, on the information of the attorney-general. [C. C. 399.] This is the so-called action of *quo warranto*.

There is now no statute in this state which says in terms that the happening of any event *ipso facto* dissolves the corporation, and unless there be such a statute, the happening of the events it declares a forfeiture will not be *ipso facto* a forfeiture, but simply give a right and to the state alone, to have the franchise judicially declared forfeited. [*City of San Pedro v. R. R. Co.*, 101 Cal. 333, 35 Pac. 993; *People v. L. A. etc. Co.*, 91 Cal. 338, 27 Pac. 673.] This rule applies to all other corporate rights or franchises as well as to the franchise of existence. [*City of San Pedro v. R. R. Co.*, 101 Cal. 333, 35 Pac. 893.] Whether *quo warranto* exists in California today by virtue of section 76 or sections 803 to 809 of the Code of Civil Procedure is immaterial as those sections are substantially alike. [*People v. Dashaway Ass'n.*, 84 Cal. 114, 24 Pac. 277.] The action is of two kinds, (1) to oust from a franchise granted, because of misuser or non-user; (2) to oust from usurping a franchise

never granted. Under (1) the action will not lie, unless the misuser is an injury to the public, and by injury to the public is meant that the breach of the charter-contract directly injures the state in some way, other than the mere jural injury that results from the breach of any contract. [People v. Dashaway Ass'n., *supra*.] Under (2) no such limitation applies. Usurping the franchise to be a corporation is conclusively presumed to be of direct harm to the commonwealth. People v. Rosenthal-Cohn Cigar Co., 63 Pac. 163 (Cal. 1900).

SECTION 37—CAUSES OF FORFEITURE.

An action may be brought by the attorney-general in the name of the people of this state, upon his own information or upon complaint of a private party, against any person who usurps, intrudes into, or unlawfully holds or exercises any public office civil or military, or any franchise within this state (the word "franchise" here covering the franchise to be a corporation). "And the attorney-general must bring the action, whenever he has reason to believe that any such office or franchise has been usurped, intruded into, or unlawfully held or exercised by any person, or when he is directed to do so by the governor." [C. C. P. 803.] The following acts have been judicially declared causes of forfeiture: (a) Exceeding the debt limit prescribed by the charter [Argenti v. S. F., 16 Cal. 255 (dictum)]; (b) accepting, as payment of a subscription to the

formative stock of a railroad, a check not drawn on present funds in bank [*People v. Chambers*, 42 Cal. 301]; (c) filing articles of incorporation not verified by at least five persons as the statute requires [*People v. G. G. Lodge, etc.*, 118 Cal. 257, 60 Pac. 865]; (d) failure to lay 3000 feet of water pipes within a year, which was required by the charter [*Spring Valley v. S. F.*, 22 Cal. 434 (dictum)]; (e) nonuser of the corporate franchise [*Miner's Ditch Co. v. Zellerbach*, 37 Cal. 543 (dictum)]; (f) filing articles of incorporation of an insurance corporation which articles fail to state the amount subscribed and that it exceeded one hundred thousand dollars. *People v. Flint*, 64 Cal. 49, 28 Pac. 495; C. C. 419.

On the other hand, filing articles of consolidation of corporations organized before the codes, in accordance with the codes, and not in accordance with the original charters is not a cause of forfeiture, but is a correct filing [*People v. Pfister*, 57 Cal. 532]; the building of a railway by a lumber corporation, for logging purposes is not a usurpation of the franchise to be a railroad corporation if the road is not to be one for traffic [*People v. Mt. Shasta Mfg. Co.*, 107 Cal. 256, 40 Pac. 391]; receiving for subscription to railroad stock checks drawn on present funds complies with the law [*People v. Stockton, etc. R. R. Co.*, 45 Cal. 306]; and the failure to allow stockholders to inspect the books [*Burham v. S. F. etc. Co.*, 76 Cal. 24, 17 Pac. 940] or the illegal levy of an assess-

ment [*People v. Rosenthal-Cohn Cigar Co.*, 63 Pac. 163 (Cal. 1900) (dictum)] are not causes of forfeiture.

It will be noted that in all the above cases wherein acts were declared to be causes of forfeiture, those acts were, with one exception [*Miner's Ditch Co. v. Zellerbach*, 37 Cal. 543], acts of defective incorporation, *i. e.*, usurpation of the franchise to be a corporation, which usurpation is always cause for forfeiture, unless the company has been in good faith doing business as a corporation for ten consecutive years. [C. C. 358.] There is one case, however, where the action of quo warranto was brought because of a misuser of the corporate franchise, in that the corporation divided its funds—it had no capital stock—among its members. That case is *People v. Dashaway Association*, 84 Cal. 114, 24 Pac. 277. The Dashaway Association was an incorporated “temperance” club devoted to the moral elevation of its members. In declining to declare the corporation dissolved because of the above act, the court said, “the public had no interest, and so was not injured, because it could not enforce such an indefinite trust as that under which this “temperance” society held its property.”

Only a creditor can take advantage of a corporation's nonuser of its franchise or abandonment of its business, because it is now so provided in terms by the section of the Civil Code dealing with this subject [C. C. 358], which section says: “If a corporation does

not organize and commence the transaction of its business, or the construction of its works within one year from the date of its incorporation, or if, after its organization and commencement of its business, it shall lose or dispose of all its property and shall fail for a period of two years to elect officers and transact, in regular order, the business of said corporation, its corporate powers shall cease, and the said corporation may be dissolved at the instance of any creditor of the said corporation at the suit of the state, on the information of the attorney-general, but the resumption of its business in good faith by such corporation prior to the commencement thereof, shall be a bar to such suit." It has been held that a railroad corporation whose sole act within the year was to buy \$22,000 of railway iron had begun "to do business within the year." *People v. Stockton, etc., R. R. Co.*, 45 Cal. 306.

SECTION 38—DEFENSES OR WAIVER OF GROUNDS.

Quo warranto only lies if at the time of commencing the action the corporation is transcending any of its powers or is unauthorizedly claiming to be a corporation. [*People v. Perrin*, 56 Cal. 345.] The constitution provides that the legislature shall not remit the forfeiture of any franchise or charter of any corporation now existing or which shall hereafter exist under the laws of this state [Art. XII, Sec. 7], but the courts have drawn a dis-

inction between forfeiture and cause of forfeiture, saying that this constitutional provision does not prohibit the legislature from remitting a cause of forfeiture [People v. L. A. etc. Co., 91 Cal. 338, 27 Pac. 673], provided only that it does so by a general law. [Art. IV, Sec. 25, Sub. 26.] The Los Angeles Electric R. R. Co. failed to begin work within a year [under Sec. 502 C. C.], and subsequently the legislature passed a general law waiving such a failure as an act of forfeiture. In upholding the constitutionality of this law the court said: "Acts sufficient to cause a forfeiture do not *per se* produce a forfeiture. The corporation exists until the state procures an adjudication of forfeiture and enforces it. The state can, and has, waived the right to insist on a forfeiture." [People v. L. A. etc. Co., *supra*.] Such a waiver is in reality only a conferring of additional powers, privileges and immunities, and this can be done by a subsequent act as well as by the original chartering act. People v. Perrin, 56 Cal. 345; see Secs. 19, 20, *supra*.

SECTION 39—PARTIES AND PROCEDURE.

Before the amendment of 1901 to Sec. 803, C. C. P., the rules as to who are proper parties to a quo warranto proceeding had been stated as follows: Quo warranto is a writ to defendants to show by what right they are exercising a franchise or franchises. It alleges either that the defendants (individuals) are unlawfully acting as a corporation,

or that defendant (corporation) is unlawfully exercising certain powers or privileges. The code has not in either case changed the common law in regard to parties or pleadings. In the first case the usurping individuals are the only proper parties; in the second case the corporation is the only proper party defendant.¹ The present rule is that the corporation is a necessary party defendant in both cases. C. C. P. 803.

Under the Bank Commissioners act [Stat. 1887, p. 90, Sec. 11], only the state and the corporation can be parties; neither creditors nor stockholders can intervene. [Murray v. Am. Surety Co., 59 Fed. 345.] Unlike other actions, the burden of proof is on the defendant; he must show by what right he is doing the acts complained of. [People v. Valcano etc. Co., 100 Cal. 87, 34 Pac. 522.] An injunction to suspend the general and ordinary business of the corporation can be granted in this action, but in none other, without due notice to the proper officers or managing agent of the corporation. C. C. P. 531.

SECTION 40—FORM OF JUDGMENT.

When a defendant against whom this action has been brought is adjudged guilty of usurping or intruding into, or unlawfully holding any office, franchise or privilege, judgment must be rendered that such defend-

¹ People v. Stanford, 77 Cal. 360, 19 Pac. 693, citing and explaining the earlier cases; People v. Pfister, 57 Cal. 532; People v. Flint, 64 Cal. 49, 28 Pac. 495.

ant be excluded from the office, franchise or privilege, and that he pay the costs of the action. The court may also, in its discretion, impose upon the defendant a fine not exceeding five thousand dollars, which fine, when collected, must be paid into the treasury of the state. [C. C. P. 809.] This is the only judgment that can be rendered, for the jurisdiction of the Superior Court to decree dissolution exists solely by force of this statute. In *State Investment Co. v. Superior Court*, 101 Cal. 135, 35 Pac. 549, it is said: "It [Superior Court] does not possess this jurisdiction by virtue of its general equity jurisdiction either at suit of an individual or of the state, and as the jurisdiction is derived from the statute it is limited by the statute's provisions, both as to the conditions under which it can be invoked and the extent of the judgment it may make in the exercise of this jurisdiction.¹"

In chapter IX, *post*, it will appear that the Superior Court has many times attempted to appoint receivers during the pendency of this action on the ground that the right to make the decree of ouster gives the court the right, in the interim, to take the property of the corporation into its own hands, and that in every case the Supreme Court has denied such power to appoint receivers. The corporation can go ahead

¹ See accord, *Neall v. Hill*, 16 Cal. 145; *La Societe Francaise v. District Court*, 53 Cal. 495; *Havemeyer v. Superior Court*, 84 Cal. 327, 24 Pac. 121.

with its business after quo warranto is begun; and until judgment of ouster is entered, there is no authority in any court to appoint a receiver, *pendente lite* or otherwise. [State Ins. Co. v. Superior Court, 101 Cal. 135, 35 Pac. 549.] This does not mean to decide anything about the power of a court, *after judgment*, to appoint a receiver to carry the judgment into effect, although this cannot be done in quo warranto proceedings unless a new and distinct action is brought by a creditor or a stockholder. In *Havemeyer v. Superior Court*, 84 Cal. 327, 24 Pac. 121, it is said no receiver can ever be appointed. [See Chap. IX, *post.*] There is absolutely no connection between the statutory power to decree dissolution and the jurisdiction, whether statutory or equitable, to appoint receivers.

Upon the entry of a final judgment excluding it from the franchise of being a corporation, the corporate life ceases, but a judgment declaring a corporation guilty of usurping certain named franchises without naming the one to be a corporation does not dissolve it, and it cannot be held to have intended to do so. *Yore v. Superior Court*, 108 Cal. 431, 41 Pac. 447.

It is true that the California Insolvency Act applies to corporations;¹ but just as an individual is not put to death by being declared insolvent, so such an adjudication does not accomplish the dissolution of a corporation.

¹Sec. 40, Insolvency Act of 1895; see also *Murray v. Superior Court*, 129 Cal. 628, 62 Pac. 191.

Ownership of property is not an essential of corporate life. It may be never so insolvent, it may have lost all its property at one fell stroke, it may be carrying on water a mountain of debt, bonded or floating—but not one of those facts, nor all together, dissolve it. *Sullivan v. Triunfo, etc. Co.*, 39 Cal. 459; *Dingley v. McDonald*, 124 Cal. 90, 56 Pac. 790.

An adjudication of insolvency not only does not dissolve the corporation, but does not remove it from the control of its directors or managers. *Dingley v. McDonald*, 124 Cal. 90, 56 Pac. 790; *Long v. Superior Court*, 102 Cal. 449, 36 Pac. 807.

SECTION 41—CONTROL OF LIQUIDATION.

On the entering of a final decree of dissolution, title to the corporate property devolves, by operation of law, upon the directors then in office as trustees for the creditors and stockholders, with full power to collect, sell, or otherwise dispose for the purposes of liquidation and distribution. Stockholders have no more legal interest in the corporate property after dissolution than they had before. Title is in the directors as trustees, and they are therefore necessary parties in any action affecting the rights or interests of the late corporation in property, real or personal. *Clark v. San Francisco*, 53 Cal. 306.

This right to settle the affairs of the dissolved corporation and to possession and control of its assets during the liquidation is ex-

pressly granted and conferred on the directors in office at the time of dissolution by the Civil Code [C. C. 409] in all cases but one. The Superior Court of the county in which the corporation carries on its business or has its principal place of business, on application of any creditor, or of any stockholder or member, may appoint one or more persons to be receivers or trustees of the corporation, to take charge of its estate and effects, to collect the debts and property due and belonging to the corporation, and to pay the outstanding debts thereof, and to divide the moneys and other property that shall remain over among the stockholders or members. [C. C. P. 565.] In *State Investment and Ins. Co. v. Superior Ct.*, 101 Cal. 135, 35 Pac. 549, is a clear summary of the rule. It is there said: "This section [C. C. P. 565] is the only law in the state giving courts power to appoint any one in the place of the directors at the time of dissolution, and the authority therein given is at once the source and the limit of the power of the court. Only on the application of a creditor or stockholder can the appointment be made,¹ for in all other cases, both of voluntary and involuntary dissolution, the right to wind up is given by statute to the directors." C. C. 400.

If there should be no directors in office at the time of dissolution, or for any reason they

¹ "May" means "must." *Havemeyer v. Supr. Ct.*, 84 Cal. 327, 24 Pac. 121.

are incompetent to act, the general power that there is in every court to carry its decrees into effect gives it authority to appoint others to act as trustees in place of the directors, with the same powers and responsibilities that such directors would have had. [State Inv. Co. v. Sup. Ct., *supra* (dictum.)] There is a recent decision, based on the Bank Commissioners' Act [Stat. 1895, p. 175, Sec. 11], which declares that such an appointment can be made without notice to the directors, unless they have previously informed the court of their incumbency. *Braslan v. Superior Court*, 124 Cal. 123, 56 Pac. 792 (dictum.)

SECTION 42—DISPOSITION OF PROPERTY.

There is no direct statement anywhere in the codes that, upon dissolution of a corporation, its property belongs to its creditors and stockholders and not to the state; but there are a number of sections of which this is the necessary inference [Sec. 309 C. C., Sec. 565 C. C. P., Sec. 400 C. C.], and it is well settled that the rule is as thus stated. [State Inv. Co. v. Sup. Ct., 101 Cal. 135, 35 Pac. 549.] The state has no interest in the property of a dissolved corporation, unless there be no stockholders, members, or creditors. *People v. College of California*, 38 Cal. 166.

A corporation cannot voluntarily dissolve unless it can prove that it has paid all its debts and has no creditors [Secs. 34, 35, *supra*]; in cases of involuntary dissolution, all the assets of the corporation form a fund for

the payment of its creditors. [See Chap. XIX, *post.*] If after all the debts and liabilities have been paid, there remains any surplus, it must be divided among, and distributed to, the stockholders. C. C. 309.

It has been held that a by-law providing that creditors who are not stockholders shall have a preference, in the event of insolvency or dissolution, over creditors who are, is a valid by-law and violates nothing in the constitution of the state. [Murphy v. Pac. Bank, 130 Cal. 542, 62 Pac. 1059.] This case will be again referred to in the discussion of the power of California corporations to create preferred stock, section 85, *post.*

If a corporation has no stockholders or members, and no creditors, on dissolution all its property escheats to the state, except such real estate as was acquired by gift; which realty reverts to the donor. People v. College of Cal., 38 Cal. 166.

SECTION 43—EFFECT OF EXPIRATION OF TERM OF EXISTENCE.

While there is nothing in the California authorities on this subject, and while the expression of the personal opinion of the author is no part of the purpose of this book, it would seem that the expiration of its term of existence is a *cause* of forfeiture, not per se a dissolution. If the corporation continued to transact business, quo warranto would be the only penalty; while if the directors chose, they could, after paying the debts of the cor-

poration, distribute its capital stock, including all its assets, among the stockholders, without incurring any penalty. C. C. 309.

The practical effect of recent legislation has been to make almost all franchises, except the one to be a corporation, freely alienable, so that if the members of a corporation desire to continue its corporate business, they have only to submit to the inconvenience and costs of incorporating a new company.

CHAPTER VI.

TAXATION.

SEC. 44—TAXED AS PERSONS.

SEC. 45—TAXATION OF SHARES.

SECTION 44—TAXED AS PERSONS.

There is nothing peculiar to corporations in the ownership of property. Individuals enjoy the rights of ownership and the state taxes them thereon, and as it taxes them, so must it tax corporations enjoying similar rights within the state. [C. P. R. R. Co. v. Board etc., 60 Cal. 35.] In this respect the fourteenth amendment to the United States constitution applies to and protects corporations. Railroad Tax Case, 8 Sawyer 238,—C. P. R. R. Co. v. Board etc., 60 Cal. 35, on this point disapproved.

Franchises are property that can be taken and held by private parties as well as by corporations, and must be taxed to corporations in the same way as they are taxed to individuals. [Railroad Tax Case, *supra*.] Franchises granted by the state of California are taxable by it [Const. Art. XIII, Sec. 1], but franchises granted by the United States, or by any other state or by foreign countries,

California cannot tax. *State of Cal. v. Central Pac. R. R. Co.*, 127 U. S. 1, 8 Sup. Ct. Rep. 1073.

The right to be a corporation is a franchise and therefore is taxable;¹ it is property that cannot be taken without due compensation. [*Spring Valley W. W. v. Schottler*, 62 Cal. 69.] The law leaves to the assessor and the board of equalization the power to fix values, and with the valuation determined by them, the courts cannot interfere except for fraud. Thus, the courts refuse to restrain an assessor from collecting a tax from a gas company where he had fixed the value of its franchises at the difference between the market value of its shares and the value of all the property owned by it, and had determined the value of its gas-mains by adding to the cost of the iron the cost of putting it down in the streets. [*San Jose Gas. Co. v. January*, 57 Cal. 614.] It should be remarked that the franchises thus taxed were not only the right to exist as a corporation, but also the right to use the streets for the purposes of the gas business, which latter franchise is by far the more valuable. Indeed, as incorporation is a matter of right in California, the taxable value of the corporate franchise would appear to be nominal, especially as it has been held that a corporation has no "good will." *Spring Valley W. W. v. Schottler*. 62 Cal. 69.

1. Constitution Art. XIII, Sec. 1; *Spring Valley W. W. v. Schottler*, 62 Cal. 69; *San Jose Gas Co. v. January*, 57 Cal. 614.

SECTION 45—TAXATION OF SHARES.

The "stock" of a corporation consists of its property, i. e., its corporate franchise as well as all else it owns or possesses. The constitution, article XIII, section 1, provides that "stock" may be taxed, but it also provides, in the same section, that all property shall be taxed in accordance with its value. An attempt was made to tax the owners of shares of stock in addition to the tax paid by the corporation on its property, which attempt was defeated in the celebrated case of *Burke v. Badlam*, 57 Cal. 594. The court there said: "Shares of stock are an interest in the capital or stock of the corporation; they are an undivided interest therein and to tax them also would be double taxation. As far as its property is concerned the corporation is a trustee for the shareholders." This decision is now incorporated in section 3608, Political Code, which provides that the stock, not the shares of stock, should be taxed, except in the case of national banks doing business in California. [Pol. C. 3609, 3610.] It will be noted that *Burke v. Badlam* (*supra*) decides that shares of stock are property, that capital stock is property; that either may be taxed, but not both. Accord, *Spring Valley W. W. v. Schottler*, 62 Cal. 69.

CHAPTER VII.

POWERS AND LIABILITIES OF CORPORATIONS.

- SEC. 46.—POWERS IN GENERAL.
SEC. 47.—SOURCE OF POWER TO CONTRACT.
SEC. 48.—MODE OF EXERCISE.
SEC. 49.—POWER TO TAKE OR HOLD STOCK.
SEC. 50.—TO CONTRACT DEBTS AND ISSUE EVIDENCES
THEREOF.
SEC. 51.—BONDS—FOR WHAT ISSUED.
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SEC. 65.—FRANCHISES—AS PROPERTY.
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SECTION 46—POWER IN GENERAL.

It was a rule of interpretation at common law that corporations possess only such corporate powers as are expressly given by statute or by their charter, and such as shall be necessary to the exercise of the powers

enumerated and given. [Dunbar v. Alcalde of S. F., 1 Cal. 355; Smith v. Dunbar, 2 Cal. 524.] This rule is part of our present constitution [Art. XII, Sec. 9] and has been expressed in every general corporation statute that has ever been enacted in California. The Civil Code states it as follows [C. C. 354, 355]:

"Every corporation, as such, has power:

"1. Of succession by its corporate name, for the period limited, and when no period is limited, perpetually;

"2. To sue and be sued in any court;

"3. To make and use a common seal, and alter the same at pleasure;

"4. To purchase, hold and convey such real and personal estate as the purposes of the corporation may require, not exceeding the amount limited (by law). See Secs. 63, 64, *post*;

"5. To appoint such subordinate officers or agents as the business of the corporation may require and to allow them suitable compensation;

"6. To make by-laws, not inconsistent with any existing law, for the management of its property, the regulation of its affairs and for the transfer of its stock;

"7. To admit stockholders or members, and to sell their stock or shares for the payment of assessments or installments;

"8. To enter into any obligations or contracts essential to the transaction of its ordinary affairs or for the purposes of the corporation." C. C. 354.

"In addition to these enumerated powers, and to those expressly given in that title of the code under which it is incorporated¹ no corporation shall possess or exercise any corporate powers, except such as are necessary to the exercise of the powers so enumerated and given. C. C. 355.

In construing the similar provision of an earlier statute [Compiled Laws of Cal., 1850-53 p. 280, Sec. 2], it was said that this section is to be construed, in each case, as will tend to promote rather than to defeat or obstruct the end for which the corporation was organized. *Vandall v. So. S. F. etc. Co.*, 40 Cal. 83.

SECTION 47—SOURCE OF POWER TO CONTRACT.

The power to make such contracts and incur such contract obligations as are necessary and usual in the course of its business to obtain the objects for which it was created is one of the powers expressly enumerated. [Sec. 46, *supra*.] This power is so far inherent and implied in every corporation [*Union Co. v. Murphy's Flat Co.*, 22 Cal. 621] that a contract not upon its face necessarily beyond the scope of the corporation's powers will be deemed valid.² Thus a corporation organized to buy, improve and sell land has power to build or subscribe to a railroad that shall run to a point near its lands, the construction of

1. The purposes expressed in the articles of incorporation determine under what title of the code the corporation is formed. Sec. 2, *supra*.

2. *Brown v. Board of Education*, 103 Cal. 531, 37 Pac. 503; *Evans v. Bailey*, 66 Cal. 112, 4 Pac. 1089.

which will benefit them [*Vandall v. So. S. F. Co.*, 40 Cal. 83]; a street railroad has power to contract to have a baseball park built near its line [*Temple St. Cable Co. v. Hellman*, 103 Cal. 634, 37 Pac. 530]; and a corporation organized to engage in any species of trade, foreign or domestic, can supply water to a municipality [*People v. Blake*, 19 Cal. 579]; but a turnpike corporation could not validly contract to purchase land not necessary to the building or maintenance of its road. *Coleman v. San Rafael, etc. Co.*, 49 Cal. 517.

Such contracts of a corporation as are within its power to make, stand on the same footing as those of natural persons and depend upon the same circumstances for their validity and effect. [*Argenti v. San Francisco*, 16 Cal. 256.] For example, a corporation cannot make contracts that are in restraint of trade or against public policy [*San Diego W. Co. v. San Diego F. Co.*, 108 Cal. 549, 41 Pac. 495], while the privilege [C. C. P. 1056-57] granted to a surety company to become sole surety does not authorize it to become surety for a larger amount than its surplus assets. It can be excepted to, like a natural person. *Fox v. Hale & Norcross Co.*, 97 Cal. 353, 32 Pac. 446.

SECTION 48—MODE OF EXERCISE.

Whenever the grant of power prescribes the mode in which it shall be exercised, such mode is at once restrictive and exclusive.

Be the power itself never so inherent in the corporation, if the mode of its exercise is prescribed in the charter it cannot be validly exercised in any other way.¹ If no mode is prescribed, it is open to the corporation to exercise its powers in any way it may choose. *Carey v. Philadelphia, etc. Co.*, 33 Cal. 694; *McKiernan v. Lenzen*, 56 Cal. 61.

It was formerly questioned whether a corporation could ever be held liable on an implied contract [*S. F. Gas Co. v. S. F.*, 9 Cal. 453], but that it can be so held is well settled today. [*Barstow v. City R. R. Co.*, 42 Cal. 465; *Bee v. S. F., etc. R. R. Co.*, 46 Cal. 245; *Gifford v. Carvill*, 29 Cal. 589.] An implied obligation to pay for benefits it has received and accepted arises against a corporation as well as against a natural person [*Id.*], provided only the corporation had power to enter into contracts to receive such benefit. As chapter VIII, *post*, will deal with the effect of *ultra vires* acts, that discussion will not be anticipated here.

SECTION 49—POWER TO TAKE OR HOLD STOCK.

The vexing question as to the power of one corporation to become a shareholder in another is reduced under the codes to very simple terms. California corporations can make all contracts necessary to carry out the purpose for which they were incorporated, and can be incorporated for any purpose;

¹ *Holland v. San Francisco*, 7 Cal. 361; *McCracken v. San Francisco*, 16 Cal. 591; *Gashwiler v. Willis*, 33 Cal. 11; *Boyd v. Heron*, 125 Cal. 453, 58 Pac. 64.

they can therefore take and hold stock and become stockholders whenever such an act is a reasonable or necessary means of conducting the corporate business. *Market St. R. R. Co. v. Hellman*, 109 Cal. 571, 42 Pac. 225; *Knowles v. Sandercock*, 107 Cal. 629, 40 Pac. 1047.

If, in any case, it does not appear under what circumstances the stock was acquired or is held, it will be deemed to have been validly acquired [*Evans v. Bailey*, 66 Cal. 112, 4 Pac. 1089; *Miners' Ditch Co. v. Zellerbach*, 37 Cal. 578]; but where a corporation's purposes, as expressed in its charter, do not expressly or impliedly give it the power to subscribe for stock in another corporation; such a contract of subscription is absolutely void. *Pauly v. Coronado Beach Co.*, 56 Fed. 428. Compare *Knowles v. Sandercock*, 107 Cal. 629, 40 Pac. 1047.

SECTION 50—TO CONTRACT DEBTS AND ISSUE EVIDENCES THEREOF.

The power to create debts is one of the incidental powers of a corporation [*Smith v. Eureka Flour Mills*, 6 Cal. 1]; one that is nowhere expressly stated in the statutes, but is recognized therein by being regulated thereby. [Const. Art. XII, Sec. 2; C. C. 356, 309; C. C. P. 359; P. C. 560.] The point was raised in an early case that the provision of the general corporation law of 1850 [Stats. p. 347, Sec. 3], "no corporation (other than banks) shall be deemed to possess the power

of issuing bills, notes or other evidences of debt, upon loans or for circulation as money," deprived corporations of the power to make and issue negotiable paper. But the point did not commend itself to the court. "This section must be read in connection with that other section [Sec. 14, now C. C. 309], which limits the corporation's power to incur debts to the amount of the capital stock paid in; this contemplates that corporations will incur debts, and if so, it must be inferred that they were to create the ordinary evidences of debt." *Magee v. Mokelumne etc. Co.*, 5 Cal. 258.

Corporations can issue negotiable paper for all other purposes than to circulate as money [*Smith v. Eureka Flour Mills*, 6 Cal. 1]; to carry out the powers granted them, corporations have the same rights that individuals have. Any contract for which a corporation can make an absolute promise of payment, it can make a conditional promise, as a guarantee or indemnity. [*Low v. C. P. R. R. Co.*, 52 Cal. 53.] It cannot, however, validly promise to pay the debt of another if it has no interest in the subject matter of the debt [*Head v. Harris*, 18 Cal. 211], and therefore cannot issue its paper for that purpose. *Granger v. Empire M. Co.*, 59 Cal. 678; *Bowen v. Needles Nat. Bank*, 94 Fed. 925; *Hall v. Auburn Co.*, 27 Cal. 255.

The directors are prohibited from creating debts beyond the amount of the subscribed capital stock [C. C. 309], but that statute is merely directory, so that debts created in

excess are not void [Sec. 134, *post*]; the only penalty is a personal liability of the directors to the corporation and its creditors. *Underhill v. Santa Barbara Co.*, 93 Cal. 300, 28 Pac. 1049.

SECTION 51—BONDS, FOR WHAT ISSUED.

Bonds cannot be issued except for money paid, labor done or property actually received, and all fictitious increase of indebtedness is void. [Const. Art. XII, Sec. 11; C. C. 359.] "Bonded indebtedness," as here used, does not include a non-negotiable note secured by mortgage. To constitute a bonded indebtedness it must be secured by mortgage, but all debts secured by mortgage are not bonded indebtedness. [*Underhill v. Santa Barbara Co.*, 93 Cal. 300, 28 Pac. 1049.] The bond and the mortgage are two different and distinct things; the bonds may be perfectly legal and valid, though the mortgage by which they are secured be null and void because of want of power in the corporation or the directors to make it. [*Illinois Bank etc. v. Pac. R. R. Co.*, 117 Cal. 332, 49 Pac. 197.] The issuance of bonds to raise money is merely the creation of a debt, and the validity of the bonds is determined solely by the power of the corporation to borrow. *Boyd v. Heron*, 125 Cal. 453, 58 Pac. 54.

Bonds cannot be issued as collateral security for a pre-existing debt. *Farmers L. & T. Co. v. San Diego Car Co.*, 45 Fed. 518.

SECTION 52—MODE OF ISSUE.

In a subsequent section it will be seen that the powers of the corporation can only be exercised through the board of directors acting as such [Sec. 133, *post*]; but it is deemed best to discuss at this point the meaning of the provision that requires the consent of two-thirds of the stockholders to create or increase the bonded indebtedness. [Const., Art. XII, Sec. 11, C. C. 359.] It will be noted that the constitution says that bonded indebtedness shall not be *increased*, except in pursuance of general law, nor without the consent of the persons holding the larger amount in value of the stock. According, distinguishing between *creating* and *increasing*, it was held that this allowed the directors alone, without the consent of the stockholders, to make the first issue of bonds. *McLane v. Placerville, etc. B. R.*, 66 Cal. 606, 6 Pac. 748; *Union, etc. Co. v. So. Cal. Motor Co.*, 51 Fed. 840.

In 1893 the general law as to bonded indebtedness was amended so as to read: "Every corporation may *increase* or diminish its capital stock, *create or increase* its bonded indebtedness, subject * * * to the consent of the holders of at least two-thirds of the subscribed capital stock." [C. C. 359, Stats. 1893, p. 191.] This change in the law is noted in a recent case, which decides that no corporation can "*create*" or increase its bonded indebtedness, except by vote of two-thirds of the subscribed capital stock, at a meeting called by

the board of directors for that purpose and after notice of the time and place of the meeting.¹ As the calling of the meeting is the act of the board of directors, it thus requires both the consent of the board and of the holders of two-thirds of the stock to create or increase a bonded debt. See *Curtin v. Salmon R. Co.*, 130 Cal. 345, 62 Pac. 552, construing analogous provisions of stats. 1897, p. 96; see also Chap. XIV, *post*.

SECTION 53—CERTAIN CHARTERS INTERPRETED.

The power given to savings banks [C. C. 571] to "invest" their funds has been held to confer power to make mortgage loans and to purchase mortgage-secured debts, and such power includes the power to foreclose and get a deficiency judgment. [*Savings Bank v. Barrett*, 126 Cal. 413, 58 Pac. 914.] A railroad corporation has power to dedicate a portion of its lands to the public as a highway;² a mining corporation has power to hire laborers "on shares,"—and such contract is not a lease.³ A savings bank can purchase and take over the deposits of another savings banks. *Green v. Odd Fellows etc. Bank*, 65 Cal. 71, 2 Pac. 887.

¹ *Boyd v. Heron*, 125 Cal. 453, 58 Pac. 64. For statutes in full, regulating the call and notice of meeting, issuing, increasing or decreasing bonds, see Part II, *post*.

² *People v. Eel R. etc. Co.*, 98 Cal. at 668, 33 Pac. 728, citing *Los Angeles Cemetery Association v. Los Angeles*, 95 Cal. 420, 30 Pac. 523.

³ *Hudohl v. Liberty Hill, etc. Co.*, 80 Cal. 553, 22 Pac. 339, construing statutes 1880, p. 131, statutes 1897, p. 96.

SECTION 54—WHO CAN EXERCISE CORPORATE POWERS.

The powers of a corporation can only be exercised in the mode prescribed by its charter. [Sec. 48, *supra*.] In the sense that "mode" refers to the formal requisites of contracts, such as offer, acceptance, consideration, etc., there is no peculiar mode prescribed for corporations.³ It is in the sense that "mode" refers to the persons who are authorized to exercise the corporate powers granted, that the word is used in connection with the acts of corporations. A corporation has no eyes, ears or hands except those of its agents, and its powers must be exercised through them. [Balfour v. Fresno, etc., Canal Co., 123 Cal. 395, 55 Pac. 106.] In which of its numerous agents, then, are its corporate powers lodged?

By statute it is expressly declared that the corporate powers, business and property must be exercised, conducted and controlled by a board of directors, to be elected from among the stockholders or members. C. C., 305.

Seemingly there should be no more difficulty with the conception that the corporation's powers are vested in the board of directors than there is with the conception that the legislative power of the state is vested in the legislature. No one has difficulty with

³ Crowley v. Genesee M. Co., 55 Cal. 273. See also act of 1861, now repealed, that railroad companies could only contract in writing, and the interpretation of that act in Pixley v. Western Pac. R. R. Co., 33 Cal. 183.

the proposition that an individual member of the assembly or the senate has no power to bind the state, or that all the members of the two houses, unless lawfully convened and assembled and acting as such, cannot enact legislation. Nor are we confused by the further fact that some acts require, in addition to a vote of the legislative power, a vote of the people of the state. Yet the mass of litigation that has arisen and is continually arising on the question who can exercise the powers of the corporation, testify that though one conception is readily understood, the other is not.

In *Gashwiler v. Willis*, 33 Cal. 11, which is the leading case in California on this subject, it is announced and emphasized "that only the *board* of directors, acting as such, can do a valid corporate act, since that is the *mode* of acting prescribed by charter. In that case there was unanimously adopted at a meeting of all the stockholders a resolution authorizing Willis, Hodges and Turner to sell a mine belonging to the corporation. Willis, Hodges and Turner were each of them directors and constituted a majority of the board. These three made and delivered a deed pursuant to the resolution, which deed the court held void. "The stockholders are not owners of the corporation's property; they cannot convey it away or authorize any agents to do it for them, even though such agents are the members of the board of directors. Only the board, duly assembled and acting as such,

could divest the corporation of its title." In *Alta Silver Mining Co. v. Mining Co.*, 78 Cal. 629, 21 Pac. 373, a mortgage of the mining ground was signed by over two-thirds of the stockholders and by all the directors individually, and this was held not to have been made by the corporation, and foreclosure was denied. The absence of a resolution of the board of directors rendered the instrument invalid. [*Thomasson v. M. E. church*, 113 Cal. 558, 45 Pac. 838.] What the board can do it can do through agents, but similarly to give an agent actual authority to bind the corporation requires a resolution of the board. *Salfield v. Sutter Co.*, 94 Cal. 546, 29 Pac. 1105; *Gashwiler v. Willis*, 33 Cal. 11; *Harding v. Vandewater*, 40 Cal. 77; *So. Cal., etc. Asso. v. Bustamente*, 52 Cal. 192; *Alta S. M. Co. v. Alta Placer M. Co.*, 78 Cal. 629, 21 Pac. 373; *Blood v. La Serena, etc. Co.*, 113 Cal. 221, 45 Pac. 252, 41 Pac. 1017.

The board acts through a majority or quorum. [C. C. 305.] All that a minority can do is to fill vacancies. *Brown v. Valley View M. Co.*, 127 Cal. 630, 60 Pac. 424. See section 146, *post*.

The extent of the powers conferred on the directors, what acts are within the scope of their authority, and what acts require in addition the consent of the stockholders, will be treated of in chapter XVI—"Powers of Directors." The object of the discussion here has been to show that no corporate act can be

done or obligation created except by authority of the *board* of directors.

SECTION 55—PLEADING AND PROOF.

One who sues a corporation must allege and prove that the contract or instrument relied on was made by the corporation or ratified by it.¹ An allegation that "a note and mortgage were made by X., the then president, and G., the then secretary, for and on behalf of the corporation" is a sufficient allegation that the corporation became indebted. [Rowe v. Table Mt. Co., 10 Cal. 442.] Where the act relied on was done through an officer or agent of the corporation, a plaintiff must not only prove that the officer was acting for the corporation, but also that such officer had authority to do the act. Reed v. Buffurn, 79 Cal. 77, 21 Pac. 555.

A prima facie presumption of validity arises from the use of a seal, on proof that the seal is the seal of the corporation.² "Instruments apparently regularly executed and under the corporate seal and signed by the proper officers are prima facie corporate instruments."³ The meaning of this is that if an officer purporting to bind the corpor-

1 Barney v. Pforr, 117 Cal. 56, 48 Pac. 987; Fudicker v. East Riverside Dist., 109 Cal. at 39, 41 Pac. 1024; Smith v. Dorn, 96 Cal. 73, 30 Pac. 1024; Salfeld v. Sutter Co., 94 Cal. 546, 29 Pac. 1105; Alta S. M. Co. v. Alta Placer M. Co., 78 Cal. 629, 21 Pac. 373; Stockton, etc., R. R. Co. v. Stockton, etc., R. R. Co., 53 Cal. 11; So. Cal., etc., Assn. v. Bustamente, 52 Cal. 192.

2 Miners' Ditch Co. v. Zellerbach, 37 Cal. 543; Fontana v. Pac. Can. Co., 129 Cal. 51, 61 Pac. 580; Blood v. La Serena, etc., Co., 113 Cal. 221, 45 Pac. 252, 41 Pac. 1017; Colton L. & W. Co. v. Swartz, 99 Cal. 278, 83 Pac. 878; Burnett v. Lyford, 93 Cal. 114, 28 Pac. 855.

3 Miners' Ditch Co. v. Zellerbach, 37 Cal. 543.

ation, affixes the corporate seal and signs an instrument, those two acts¹ raise a prima facie presumption of his authority to make the instrument in question.² The instrument itself is primary evidence of its contents as corporate acts, and proof by the records or minutes of the board of directors is not a condition precedent to introducing it in evidence.³ Of course, this presumption can be overthrown by proof that the original authority was lacking.⁴

SECTION 56—RATIFICATION AND ESTOPPEL— DOCTRINES DEFINED.

Ratification is a doctrine of agency, and under our code the word has a well-defined and legal meaning. [*Blood v. La Serena, etc., Co.*, 113 Cal. 221, 45 Pac. 252, 41 Pac. 1017.] "An agency may be created and an authority may be conferred by a precedent authorization or a subsequent ratification" [C. C. 2307], and it is a general principle that a corporation, like an individual, may ratify and validate any unauthorized act, the doing of which it could, in the first instance, have authorized and empowered. It is unfortunately only too

1 *Fontana v. Pac. Can. Co.*, 129 Cal. 51, 61 Pac. 580.

2 *Underhill v. Santa Barbara Co.*, 93 Cal. 300, 28 Pac. 1049; *So. Cal., etc., Asso. v. Bustamente*, 52 Cal. 192; *Crescent City, etc., Co. v. Simpson*, 77 Cal. 286, 19 Pac. 426; *Schallard v. Eel R., etc., Co.*, 70 Cal. 144, 11 Pac. 590; *Mills v. Boyle Min. Co.*, 64 Pac. 122 (Cal. 1901).

3 *Hawley v. Gray Bros. Co.*, 106 Cal. 337, 39 Pac. 609; *Purser v. Eagle Lake Co.*, 111 Cal. 139, 43 Pac. 523; *Balfour-Guthrie Co. v. Woodworth*, 124 Cal. 169, 56 Pac. 891; *Barrell v. Lake View, etc., Co.*, 121 Cal. 129, 54 Pac. 594.

4 *Blood v. La Serena, etc., Co.*, 113 Cal. 221, 45 Pac. 252, 41 Pac. 1017.

true, as pointed out by Henshaw, J., in *Blood v. La Serena L. & W. Co.*, *supra*, that there has often been little inclination displayed to distinguish between ratification and estoppel. If the mode of ratification were not governed by statute this failure to distinguish would not be of great harm, for by either name the defendant corporation would be equally bound. But our code makes express provision for the manner of ratification: "It can be made only in the manner that would have been necessary to confer original authority for the act ratified, or, where an oral authorization would suffice [see C. C. 2309], by accepting or retaining the benefit of the act, with due notice thereof" [C. C. 2310], and much confusion has arisen from using the word "ratification" interchangeably with "estoppel," or with the verbs "to adopt" or "to confirm." Justice Henshaw cites *Borel v. Rollins*, 30 Cal. 408, as an instance of this unfortunate state of affairs.

Ratification is the creation of an agency by subsequent authorization; it is but an expression of the power to contract and of a willingness to be bound by acts already done. Applying the definition in the code to corporations, in order to have a ratification there must concur (a) (where an oral authorization would suffice): 1. An acceptance or retaining of benefits for the corporation by some agent or agents, the scope of whose authority allows him to do so; 2. Knowledge on the part of

such agent of the circumstances under which the benefits were conferred; or (b) (where an oral authorization would not suffice).

1 A resolution of the board of directors which expressly or impliedly assumes responsibility for the act done;

2. Knowledge at time of resolution on the part of the board, or on the part of any officer of the corporation whose position is such that it is reasonable to presume that he will impart his knowledge to the directors, of the circumstances under which the acts were performed. *Balfour v. Fresno Canal, etc., Co.*, 123 Cal. 395, 55 Pac. 1062.

Proof of facts sufficient to bring the case within either of the above categories is proof of ratification. Thus, when a mortgage has been made by a board of directors at a meeting at which there was no quorum, a resolution providing payment of the mortgage debt passed at a valid subsequent meeting is a ratification, though the resolution did not say in terms there was an intention to ratify [*Porter v. Lassen County, etc., Co.*, 127 Cal. 261, 59 Pac. 563]; and likewise where provision was made for payment of a note which had been made by an officer without authority, but the proceeds of which the corporation had received, such provision amounted to a ratification. [*Forbes v. San Rafael, etc., Co.*, 50 Cal. 340.] These are both examples of implied ratification. See also *Anglo Cal. Bank v. Mahony M. Co.*, 5 Sawyer 255.

SECTION 57—SAME.

It is where the acts relied on to constitute ratification fall short of that result, that resort is had to the doctrine of estoppel. Estoppel is a penalty and the essence of it always is that the party on whom the penalty falls is not allowed to assert the truth. To assert that a corporation is estopped to deny it did an act, is simply saying it did *not* do the act but that the law visits on it the same liability it would have borne had it really acted. Estoppel addresses itself to equity as the means of preventing a party from acting a lie and escaping the penalty by asserting the truth. In its application to corporations there is nothing peculiar. [Alvord *v.* Spring Valley etc. Co., 106 Cal. 547, 40 Pac. 27.] The fact that corporations can only contract in a certain mode or modes is immaterial, because, as has just been said, estoppel presupposes that the contract was not made at all. *Sussman v. San Luis Obispo County*, 126 Cal. 536, 59 Pac. 24.

Estoppel bears to ratification a relation analogous to that between contracts and quasi-contractual obligations. Ratification, express or implied, is true ratification, just as contracts, express or implied are true contracts, and as quasi-contractual obligations are neither "quasi" nor "contractual," so "ratification by estoppel" is not ratification at all.

The cases in California dealing with the doctrine of ratification and estoppel, as ap-

plied to acts done by corporations within their power to do,¹ are the following:

SECTION 58—RATIFICATION (*Cases*).

Holland v. San Francisco, 7 Cal. 361—An act required to be done by an ordinance of the city, can only be ratified by ordinance. The "public" corporation law in this case is explained in *Lucas v. San Francisco*, 7 Cal. 463, and criticised in *Argenti v. S. F.*, 16 Cal. 256.

Pioneer Gold Mining Co. v. Baker, 20 Fed. 4—A contract made by two directors, individually, in behalf of the corporation but really intended to injure it, can be ratified by the corporation if it sees fit, and when ratified, the corporation can sue and be sued thereon.

McCracken v. San Francisco, 16 Cal. 591—Where original authority can only be conferred in a particular mode, ratification can only be made in the same form or mode.

Salfield v. Sutter Co. Land Co., 94 Cal. 546²—Agents of the corporation-defendant, without authority, sold land to plaintiff, and defendant accepted the money. Plaintiff demands a deed, which the court refused, saying that whatever action he might have for damages or to recover the money, the corporation never made any contract to give him a deed, and he has not shown any resolution of the directors, duly assembled and acting as a board, ratify-

¹ For ultra vires acts, see Chap. VIII, *post*.

² Citing *Gashwiler v. Willis*, 33 Cal. 11; *Harding v. Vandewater*, 41 Cal. 71; *So. Cal. etc. Asso. v. Bustamente*, 52 Cal. 192, C. C. Secs. 305, 308.

ing the agent's contract, which resolution is the only means by which the corporation could ratify.

Deane v. Gray Bros. Co., 109 Cal. 433, 42 Pac. 443—One of the employes of the corporation was injured and another employé requested plaintiff, a physician, to furnish medical treatment. Plaintiff did so, the corporation having full knowledge of all the circumstances, but remaining passive and allowing plaintiff to go on with his labors. Plaintiff claims this constituted a ratification of the employé's request and sues the corporation for the services rendered; but the court decided for defendant, holding that plaintiff makes out no case by showing that he was hired by a third person. The corporation by remaining passive did not ratify the contract, because the corporation was not, in the first instance, under any legal obligation to employ a doctor.

Thomasson v. Grace M. E. Church, 113 Cal. 558, 45 Pac. 838—The directors of a church, by allowing plaintiff, at request of two of them, individually, to pave the street in front of the building, did not bind the corporation to pay therefor.

Blood v. La Serena L. and W. Co., 113 Cal. 221, 45 Pac. 252, 41 Pac. 1017—The action of the corporation in accepting the proceeds of a sale of its lands made to plaintiff by the president and secretary, without authority, is not a ratification. It takes a formal resolution of the board to ratify a sale of lands. [It is to

be noted that the court here intimated that the facts shown amounted to an estoppel.]

Pacific Bank v. Stone, 121 Cal. 202, 53 Pac. 634—As the president of a corporation has no power, by virtue of his office, to employ an attorney, acceptance by the corporation of the services of such attorney is not a ratification.

Balfour v. Fresno Canal Co., 123 Cal. 395, 55 Pac. 1062—Notice to the president of facts affecting the interests of the corporation, and a subsequent acceptance by the corporation of the benefit of those acts, is a ratification. [This is another unfortunate use of words. It is an estoppel, not a ratification.] *Pixley v. W. P. R. R. Co.*, 33 Cal. 183.

The stockholders, similarly, can confer authority by ratification whenever they can do so by original authorization [*Market St. R. R. Co. v. Hellman*, 109 Cal. 571, 42 Pac. 225; *Underhill v. Santa Barbara*, 93 Cal. 300, 28 Pac. 1049], but whether ratification be made in the appropriate case by directors or by stockholders, it will not be allowed to date back to the time of the making of the contract, if the rights of innocent third parties would be prejudiced thereby. *Cal. S. Hotel Co. v. Russell*, 88 Cal. 277, 26 Pac. 105.

SECTION 59—ESTOPPEL (*Cases*).

Shaver v. The Bear River Co., 10 Cal. 396—A corporation cannot, after receiving the property of plaintiff and holding it, refuse to pay therefor. [NOTE—The court calls this ratification; it is really estoppel.]

Agenti v. City of San Francisco, 16 Cal. 256—A corporation cannot escape liability for work done under a contract made by it, by pleading that such liability if added to its already existing debts, will cause it be indebted in excess of the limit fixed in its charter. [NOTE—The court places this on the double ground of ratification and estoppel without determining on which of the two the decision can safely rest. It is to be remarked that it does not depend on either, but on the effect of exceeding the debt limit. See Sec. 134; *post.*]

Gribble v. Columbus Brewing Co., 100 Cal. 69, 34 Pac. 527—When a principal with full knowledge of the facts, accepts the benefits of the contract made by his agent without authority, he is deemed to have ratified the agent's acts and is estopped to assent the agent's want of authority. This rule applies to corporations. [Citing *Pixley v. West. Pac. R. R. Co.*, 33 Cal. at 198; *Foulke v. San Diego, etc. Co.*, 51 Cal. 365; *Main v. Casserly*, 67 Cal. 127, 7 Pac. 426; C. C. 1589.] [NOTE—Estoppel is the true ground of this decision. It could not be ratification because the act in question was the making of a mortgage and an oral authorization to do that would not have been valid.] C. C. 2310.

Pauly v. Pauly, 107 Cal. 8, 40 Pac. 29—When a corporation accepts the proceeds of a promissory note issued by the president without authority, an implied contract—a quantum meruit—lies to recover the amount so

received. [NOTE—This is logically estoppel, but under our code is ratification, because oral authority to the president to make the note would have been valid.] [Phillips v. Sanger Lumber Co., 130 Cal. 431, 62 Pac. 749.] A similar case in the U. S. Dist. Court was decided in terms on the doctrine of estoppel. Union etc. Co. v. S. P. Motor Co., 51 Fed. 840.

In Pope v. Armsby Co., 111 Cal. 159, 43 Pac. 589, the court uses substantially this language: Ratification of agent's acts can be expressed or implied; acts of its managers calculated to deceive a third party and to make him believe the agent had authority, estop the corporation. [NOTE—Such language as this at once expresses and confuses legal truths.]

San Diego R. R. Co. v. Pacific Beach Co., 112 Cal. 53, 44 Pac. 333—Even assuming that the notes sued on are voidable, as defendant had received all the benefits of plaintiff's performance, it is taken conclusively to have ratified them. [NOTE—The court means estoppel, but expresses it in terms of ratification.] See this section, last paragraph, *post*.

Lady Washington C. Co. v. Wood, 113 Cal. 482, 45 Pac. 809—Where the directors have acted fraudulently and an inspection of the books at any time would have disclosed the facts, the stockholders cannot have the acts set aside after abstaining for an unreasonable length of time (over three years) from inquiry into the affairs of the corporation and absenting themselves from its meetings.

[NOTE—This is neither estoppel nor ratification, but laches.]

Illinois T. & S. Bank v. Pac. R. R. Co., 117 Cal. 332, 49 Pac. 197—A corporation whose internal policy requires its contracts to be executed in a certain manner may by acquiescence become liable on contracts made by its agents in another manner. [Citing *Underhill v. Santa Barbara Co.*, 93 Cal. 300, 28 Pac. 1049; *Argenti v. San Francisco*, 16 Cal. 255; *San Diego, etc. Co. v. Pac. Beach Co.*, 112 Cal. 53, 44 Pac. 333; *Lady Washington Co. v. Wood*, 113 Cal. 482, 45 Pac. 809.] [NOTE—This is another expression of the doctrine of estoppel.]

Barrell v. Lake View Land Co., 122 Cal. 129, 54 Pac. 594—Where the directors by resolution authorize the secretary to affix the corporate seal, the corporation cannot deny his authority.

Phillips v. Sanger Lumber Co., 130 Cal. 431, 62 Pac. 749—Oral authority from the board would have been sufficient to authorize the president to make the notes here sued on; and oral authority can be ratified by accepting and retaining the resultant proceeds. [NOTE—The opinion in this case is an admirable exposition of the code rule.] C. C. 2310. See also in accord *Mills v. Boyle Min. Co.*, 64 Pac. 122 (Cal.), decided March 1, 1901.

In passing from the foregoing statement of the cases containing the California rules of ratification and of estoppel, as applied to corporate acts, the author freely confesses that he has made no attempt to classify and har-

monize the cases, because the court which decided them did not. Indeed, the opinions are so confusing and so subtly concealing of the precise ground of decision that it seems a hopeless task to attempt to harmonize these cases, either by the historical or analytical method. But it should be noted, as however the cases fail to do, that this confusion results in a large measure from the code itself [C. C. 2310] which calls "the accepting or retaining the benefit of the act" (in cases where oral authorization would suffice) a ratification. This would generally and logically be termed an estoppel.

SECTION 60—PROPERTY—POWER TO TAKE.

The power to acquire property is only an incident of the power to contract. Whenever in a given case a corporation has power to contract to purchase property, it has power to take title thereto. [Smith v. Morse, 2 Cal. 524.] The power to acquire comes from its charter—it is an attribute of corporations [Chap. II, *supra*—and the power being given, the investitive facts of acquisition are the same in the case of a corporation as in that of a natural person. [S. F. W. Co. v. Alameda W. Co., 36 Cal. 639; Schierhold v. N. Beach, etc. R. R. Co., 40 Cal. 447.] It can buy, sell, mortgage and pledge, or exercise the power of eminent domain. [C. C. 360.] Every corporation is presumed to have power to take the legal or equitable title to property [Coleman v. San Rafael etc. Co., 49 Cal. 517

Hager v. Supervisors Yolo Co., 47 Cal. 222], real or personal, and if there is anything in its charter or in the business in which it is engaged or the law under which it is organized, abridging this power, it must be affirmatively shown by any one who attacks the corporate power or title.¹

But the power to take property is not as unlimited in the case of corporations as it is in the case of individuals; restrictions of two kinds are imposed; one, by the nature of corporate life, the other by statute.

SECTION 61—SAME—INHERENT RESTRICTIONS.

Corporations cannot be joint-tenants, because two of the essential unities] of joint-tenancy are wanting—(a) “the same capacity and title,” and (b) “survivorship.” Two corporations cannot be joint-tenants because each being theoretically perpetual there is no survivor; an individual and a corporation cannot be joint-tenants for there is no reciprocity of survivorship. Corporations can, however, be tenants in common, for such tenancy only requires unity of possession. [*Johnson v. Marine Hospital*, 2 Cal. 319.] This restriction goes to the power of the corporation to acquire.

1. *Granite G. M. Co. v. Maginness*, 118 Cal. 131, 50 Pac. 269; citing *Stockton Sav. Bank v. Staples*, 98 Cal. 189, 32 Pac. 936; *People v. La Rue*, 67 Cal. 526, 8 Pac. 84; *Miner's Ditch Co. v. Zellerbach*, 37 Cal. 543; *So. Pac. R. R. Co. v. Orton*, 6 Sawyer 157; *Natoma Water Co. v. Clarkin*, 14 Cal. at 552; *Cal. Tel. Co. v. Alta, etc., Co.*, 22 Cal. at 429; *Williams v. Gold Hill Min. Co.*, 96 Fed. 451, affirmed *Williams v. Gaylord*, 102 Fed. 372.

SECTION 62—SAME—STATUTORY RESTRICTIONS.

The first of these restrictions is contained in section 299 of the Civil Code. No corporation must purchase, locate, or hold property, in any county in this state, other than the county in which its original articles of incorporation are filed, without filing a duly certified copy of the copy of its articles filed with the secretary of state in the office of the county clerk of the county in which such property is situated, within sixty days after such purchase or location is made, and if any corporation hereafter acquires property in any county other than that in which it now holds property, it must file such copies within ninety days in such other county. The penalty for failure to comply with this provision is that the corporation cannot maintain or defend any action or proceeding in relation to such property, its rents, issues, or profits, until such certified copies are filed as directed. The penalty thus prescribed is the only penalty. This section does not go to the power of the corporation to take the property, but deprives the corporation of certain rights with respect to property it is already holding. [So. Yuba etc. Co. *v.* Rosa, 80 Cal. 333, 22 Pac. 222; Ontario State Bank *v.* Tibbitts, 80 Cal. 68, 22 Pac. 66; Emigrant etc. Co. *v.* Webber, 108 Cal. 88, 40 Pac. 1061.] Thus the section does not bar an action to *acquire* property by eminent domain. Emigrant etc. Co. *v.* Webber, 108 Cal. 88, 40 Pac. 1061.

The second of the statutory restrictions is that no private corporations can take by will, other than those formed for scientific, literary, or solely educational or religious purposes. [C. C. 1275.] A corporation that does not prove itself within this exception cannot acquire any title under a will; the bequest is void [Estate of Bulmer, 59 Cal. 131; Estate of Eastman, 60 Cal. 308], for this restriction goes to the power of the corporation.

A third restriction relates to the acquisition of real property. No corporation shall acquire any more real property than is reasonably necessary for the transaction of its business or the construction of its works, except that it may acquire and improve the land on which its business is carried on. [C. C. 360.] This means that the restriction goes to the power of the corporation [Coleman v. San Rafael etc. Co., 49 Cal. 517], and that one who seeks to set aside or avoid such a *contract* to acquire realty on the ground that it is not necessary, must prove affirmatively that it could not possibly or reasonably be said to be necessary. Shaver v. Bear R. Co., 10 Cal. 396; Coleman v. San Rafael etc. Co., 49 Cal. 517.

SECTION 63—PROPERTY—POWER TO HOLD.

Following the rule in other jurisdictions, our courts have distinguished between the power to take real property and the power to hold it. After a corporation has taken title, it is held that the question whether such property was "necessary" or not cannot be

litigated by private parties, but is a matter solely between the state and the corporation. [*Natoma Water Co. v. Clarkin*, 14 Cal. 544; *So. Pac. R. R. Co. v. Orton*, 6 Sawy. 157; *Cal. Tel. Co. v. Alta Tel. Co.*, 22 Cal. 398.] The basis of this doctrine is expediency. "It would lead to endless confusion," says Field, J., in *Natoma W. Co. v. Clarkin*, 14 Cal. 544, "if in suits by corporations to recover their property, inquiries were permitted as to the necessity of such property and the title made to rest on such necessity." This distinction is judicial legislation, for it cannot be read out of the Civil Code [Sec. 360], nor out of that provision of the constitution [Art. XII, section 9] which forbids corporations "to hold realty for a longer period than five years, except such as may be necessary to carry on its business." The sole penalty visited on the corporation for holding unnecessary property appears to be a liability to an action of quo warranto. *Cal. Tel. Co. v. Alta Tel. Co.*, 22 Cal. 398; *Granite G. M. Co. v. Maginness*, 118 Cal. 131, 50 Pac. 269.

Like the presumption as to the power to take, a corporation, in the absence of proof to the contrary, is presumed to have power to hold real estate. *Hager v. Sup. Yolo Co.*, 47 Cal. 222.

SECTION 64—SAME—POWER TO ALIENATE.

Subject only to the inhibition against dividing, withdrawing or paying to the stockholders before dissolution any part of the capital

stock [C. C. 309], California corporations have full power to dispose of and alienate any or all of their property. [Alta etc. Co. v. Alta Placer M. Co., 78 Cal. 629, 21 Pac. 373; People v. College of Cal., 38 Cal. 166; S. C. Motor Co. v. Union etc. Co., 64 Fed. 450.] This power to dispose of its property, like the power to acquire property, is an incident to the power given to corporations to contract. [C. C. 354.] Corporations, therefore, cannot alienate their property by gift, for a gift is not a contract. S. F. & N. P. R. R. Co. v. Bee, 48 Cal. 398.

The common law rule that a corporation could not dispose of all its property and cease business if even a single stockholder dissented, except where business could only be continued at a loss, is not in force in California. The statute [C. C. 358] making it a cause of forfeiture to dispose of all of its property and cease to do business, contemplates that corporations have the *power* to do those acts, and there are a number of decisions in this state expressly so holding. "Power to hold, sell or otherwise dispose of such property, real and personal, as the purposes of the corporation require, give the corporation power to dispose of all its property whenever it deems such an act beneficial." Miners' Ditch Co. v. Zellerbach, 37 Cal. 543; Higgins v. Cal. Pet. etc. Co., 122 Cal. 373, 55 Pac. 155.

In People v. P. & P. College of California, 38 Cal. 166, the doctrine is broadly stated thus: "Corporations have the same

jus desponendi as natural persons, except in so far as they are restrained by statute, and under this general power may dispose of all their property for any lawful purpose [*Eshleman v. Henrietta etc. Co.*, 102 Cal. 199, 36 Pac. 579]; and if the property is conveyed to an innocent purchaser for a purpose apparently lawful and apparently within the scope of its powers, the transaction is valid between the corporation and the purchaser, even though the corporation's secret purpose be unlawful."

All transfers of property made to defraud creditors are as voidable when made by corporations as when made by natural persons,¹ and the legislature has expressly provided [C. C. 309] that the dividing, withdrawing, or paying to the stockholders before dissolution any part of the capital stock is not only beyond the power of the directors and a misdemeanor, if done by them [P. C. 560], but is absolutely void, no matter how attempted.² This inhibition runs against the directors because they are the managers of the corporate business, but it means to deny such power to the stockholders as well as to the directors. [*Verconture v. Golden State, etc. Co.*, 116 Cal. 410, 48 Pac. 375.] Capital stock in this prohibition means all the money and property with which the corporation carries on its busi-

¹ *Blanc v. Paymaster Min. Co.*, 95 Cal. 524, 30 Pac. 765; *Higgins v. Cal. Petroleum etc. Co.*, 122 Cal. 373, 55 Pac. 155; *Head v. Horn*, 18 Cal. 211.

² *Martin v. Zellerbach*, 38 Cal. 300; *Kohl v. Lillenthal*, 81 Cal. 378, 22 Pac. 589; *Verconture v. Golden State etc. Co.*, 116 Cal. 410, 48 Pac. 375; *Shauke v. Eagle Auto. Can. Co.*, 63 Pac. 1025 (Cal. 1901).

ness. *Kohl v. Lilienthal*, 81 Cal. 378, 22 Pac. 689.

Martin v. Zellerbach, 38 Cal. 300, states the rule succinctly: "The directors may manage, control and alienate the corporate property in the regular course of business, but they cannot devote the proceeds beyond the surplus profits to the stockholders, directly or indirectly, until after all its debts are paid."

SECTION 65—FRANCHISES AS PROPERTY.

All franchises are property. The franchise to be a corporation, is property belonging to the incorporators and their successors; the franchises possessed by a corporation are not corporate power, but corporate property. [*Cal. Tel. Co. v. Alta Tel. Co.*, 22 Cal. 398.] That franchises are property for purposes of taxation has already been considered. Chap. VI, *supra*.

Though corporations are created in California under specific titles of the Civil Code for purposes whose accomplishment requires a franchise for a public use, as railroad, telegraph, water, or gas companies, the franchise to be a corporation with power to operate railroads, telegraphs, water or gas works, does not confer on the corporation the franchise necessary to accomplish those purposes. [*Atlantic Trust Co. v. Woodbridge Co.*, 79 Fed. 39.] The franchise to be a railroad, telegraph, gas or water corporation, on the one hand, and the franchise to operate a railroad or telegraph between certain points or over certain high-

ways, or to supply a city or county with gas or water, on the other hand, are two separate and distinct franchises [*Schierhold v. N. Beach* etc. R. R. Co., 40 Cal. 447], and the grant of the former is not necessarily a grant of the latter. *Waterloo Turnpike Co. v. Cole*, 51 Cal. 381.

All franchises, by a recent act of the legislature [C. C. 388], except the franchise to be a corporation [see *Robinson v. Southern Pac. R. R. Co.*, 105 Cal. 526, 38 Pac. 94, 722], are made subject to levy and execution for the satisfaction of any judgment obtained against the person, company, or corporation owning them.¹ Therefore, the cases of *People v. Duncan*, 41 Cal. 507, and *Visalia G. & E. L. Co. v. Sims*, 104 Cal. 326, 37 Pac. 1042, in so far as they state that franchises cannot be taken on execution, are no longer law. But it is still the law that "franchises can only be voluntarily alienated if such privilege be expressly granted and then only in the designated mode; for the essence of a franchise is a special personal privilege conferred by the government,"² and not alienable except with consent of the grantor.³ No statute or decision in this state has been found that makes franchises voluntarily alienable, except those owned by California corporations in foreign countries. C. C. 364.

¹ For the statutes regulating this levy and execution, see Part. II, *post*.

² *Wood v. Truckee Turnpike Co.*, 24 Cal. 474.

³ *People v. Duncan*, 41 Cal. 507; *Visalia, etc. Co. v. Sims*, 104 Cal. 326, 37 Pac. 1042.

SECTION 66—SAME—POWER TO ACQUIRE.

The provision of the constitution [Art. XII, Sec. 1] that corporations shall not be created by special act does not prohibit corporations from taking by assignment the franchises of persons who have the lawful right to exercise and transfer the same. It only applies to grants of powers directly conferred on corporations by legislative enactment. [People v. Stanford, 77 Cal. 360, 19 Pac. 693.] Therefore, a corporation authorized to operate a water-works has full power to take by assignment and exercise an exclusive franchise to supply a town with water, which franchise had been granted to an individual by the town, and the assignment of which had been with the town's consent. *Santa Ana Water Co. v. San Buenaventura*, 56 Fed. 339 (1893).

Special laws granting to any corporation any special or exclusive right, privilege, or immunity cannot be passed [Const. Art. IV, Sec. 25, sub. 19], nor can the legislature pass any law permitting the leasing or alienation of any franchise so as to relieve the franchise or property held thereunder from the liabilities of the lessor or grantor, lessee or grantee, contracted or incurred in the operation, use or enjoyment of the franchise or any of its privileges. [Const. Art. XII, Sec. 10.] In all other respects the legislature is free to deal with franchises as property.

CHAPTER VIII.

CORPORATE LIABILITY FOR WRONGFUL ACTS.

SEC. 67.—TORTS.

SEC. 68.—CRIMES.

SEC. 69.—ULTRA VIRES—DOCTRINES DEFINED.

SEC. 70.—SAME—NO POWER TO DO AT ALL.

SEC. 71.—SAME.

SEC. 72.—SAME—UNAUTHORIZED PURPOSE.

SEC. 73.—SAME—UNAUTHORIZED MODE.

SEC. 74.—SAME—WHO CAN ASSERT.

SECTION 67—TORTS.

In one of the earliest California cases [*Smith v. Morse*, 2 Cal. 524], it is said that a "corporation without soul, will, capacity to do wrong, or legal responsibility, is a legal monstrosity, whose existence no court ought to foster or protect." The doctrine that a corporation is liable for the torts of its agents acting within the scope of their duties is so well settled today¹ that it calls for no extended comment. The leading case in the state is *Maynard v. Fireman's Fund Ins. Co.* [34 Cal. 48], which was an action for libel. It holds that corporations are liable for the wrongs

¹ *Wolf v. St. Louis Co.*, 15 Cal. 319; *Bank of California v. West Union Tel. Co.*, 52 Cal. 280; *Stockton, etc., Works v. Glen Falls Co.*, 98 Cal. 557, 33 Pac. 633; *Lundy v. Delmas*, 104 Cal. 655, 38 Pac. 445; *Maynard v. Fireman's F. Ins. Co.* 34 Cal. 48.

done by their directors, acting as such, even when malice is a necessary element of the wrong. [Accord, *U. S. v. John Kelso Co.*, 86 Fed. 304.] "The directors are the chosen representatives of the corporation and constitute, for the purpose of dealing with others, the corporation. What they do within the object and purposes of the corporation the corporation does. If they injure another, even though it necessarily involves a malicious intent, the corporation is deemed guilty of the wrong and answerable like an individual;" and what the case declares concerning directors is equally true of any other agent.¹ For their failure to perform the corporation's statutory duties, the corporation is liable, but the directors are not. [*Lundy v. Delmas*, 104 Cal. 655, 38 Pac. 445.] The directors are liable for their own negligence in the same way that all agents are. [*Fox v. Hale & Norcross M. Co.*, 108 Cal. 369, 41 Pac. 308. It was urged in *Hobbs v. Amador & Sac. C. Co.*, 66 Cal. 161, 4 Pac. 1147, and in *Eureka L. & Y. Co. v. Superior Court*, 66 Cal. 311, 5 Pac. 490, two cases decided about the same time, that a preliminary injunction to restrain the committing of a tort would not lie against a corporation because of the code provision [C. C. P. 531] "that an injunction to suspend the ordinary business of a corporation cannot be granted without due notice of the application therefor to the proper officers of the corporation." But this contention was disposed

¹ See note 1 bottom page 146.

of by the ruling—undoubtedly correct—that the code section only applies to lawful acts. That the act done is also a crime is no defense to a civil action. Because the corporation could not be punished criminally, is no reason why it should not be civilly liable for its torts. *Smith v. Morse*, 2 Cal. 524.

SECTION 68—CRIMES.

Crimes wherein a "guilty mind" is an element a corporation cannot commit; for example, bigamy, perjury, rape or murder [*U. S. v. John Kelso Co.*, 86 Fed. 304], and obviously a corporation cannot be committed to prison or punished capitally. But crimes wherein mental intent is not an essential, a corporation can be held criminally responsible for and be punished by being fined. [Penal Code, 26a.] Thus a corporation can be fined for contempt. [*Eureka, etc., Co. v. Superior Court*, 66 Cal. 311, 5 Pac. 490; *Golden G., etc., Co. v. Sup. Ct.*, 65 Cal. 187, 3 Pac. 628.] And whenever a statute in general terms prohibits the doing of an act that corporations can do and does not expressly exempt them from its provisions, there is no reason why such statute should not be construed as applying to them, if the punishment provided is one that can be inflicted on a corporation, e. g., a fine. [*U. S. v. Kelso Co.*, *supra*.] Accordingly a corporation was held indictable under the U. S. laws [2 Sup. Rev. Stats. 62], making it a crime punishable by fine or imprisonment or both, for any contractor doing work for the

U. S. to intentionally employ his men over eight hours a day. [U. S. v. John Kelso Co., *supra*.] In general, it may be said that for all crimes that are merely *mala prohibita* a corporation is indictable.

SECTION 69—ULTRA VIRES—DOCTRINES DEFINED.

With respect to its powers a corporation is an abnormal person, for its legal ability to act is not commensurate with the physical ability of the human agents through whom alone its acts can be accomplished. Those acts of its agents done on its behalf, but which the corporation had no legal power to do, are called "ultra vires" acts. The term is also applied to the acts which a corporation has power to do for some purposes, but not for the purpose intended. [Miner's Ditch Co. v. Zellerbach, 37 Cal. 543.] In addition to these two senses, as the mode of exercise is part of the power, acts done in an unauthorized mode are, by analogy, sometimes designated as "ultra vires." This last use of the term is confusing as will be pointed out in dealing with the application of estoppel to the doctrines of ultra vires. [Sec. 70 *post*.] It is a simple question of law, though generally a difficult question of fact, to determine whether a particular act is ultra vires or *nitra vires* the corporation. For example, a corporation has in general no power to issue its paper as security for debts of a third party in which it has no interest, but whether or not the corporation

has an interest is a difficult question of fact. [See *Hall v. Auburn Co.*, 27 Cal. 256; *Head v. Horn*, 18 Cal. 211.] The legal test to determine whether an act is ultra vires or not is this: Is the power to do the act specially granted by charter or could it be said by a reasonable person to be necessary to the accomplishment of the powers so granted.¹ If so, it is not ultra vires. [*Kennedy v. Cal. Sav. Bk.*, 101 Cal. 495, reversed 167 U. S. 362.] And it is to be added that acts on their face not necessarily ultra vires will be deemed valid. *Brown v. Board, etc.*, 103 Cal. 531, 37 Pac. 503.

The difficulty is not what are ultra vires acts, but what is the effect of such acts. The term, as has just been said, has three distinct meanings, and in order to cope successfully with the cases it must in each case be first determined in which one of these meanings the term is used.

Before treating of the effect of ultra vires acts in each of the three meanings of that term, attention must be called to the fact that the doctrine of ultra vires has no application to completed acts.² Completed, in this connection, refers to *performance* and means

¹ *Hutchinson v. S. I. & I. Co.*, 53 Cal. 622; *Bates v. Coronado Beach Co.*, 109 Cal. 160, 41 Pac. 855; *Chemical Nat. Bank v. Havermale*, 120 Cal. 601, 52 Pac. 1071; *Gribble v. Columbus Brewing Co.*, 100 Cal. 67, 34 Pac. 527; *Union Co. v. Murphy's Flat Co.*, 22 Cal. 620; *Pauly v. Coronado Beach Co.*, 56 Fed. 428.

² *People v. College of Cal.*, 38 Cal. 166; *Miners' Ditch Co. v. Zellerbach*, 37 Cal. 543. See also the doctrine that only the state can object to a corporation's unauthorized holdings it has already acquired, Sec. 63, *supra*; also *Cal. Tel. Co. v. Alta Tel. Co.*, 22 Cal. 368.

that ultra vires has no reference to a contract or conveyance, both parties to which have fully performed their obligations. This restriction is based on the legal maxim that when the parties are equally in the wrong, neither can call on a court for aid. [People v. College of Cal., *supra*.] Where fraud, however, enters into the contract, this rule has no application. Woodruff v. Howes, 88 Cal. 184, 26 Pac. 111.

SECTION 70—SAME—(a) NO POWER TO DO
AT ALL.

What the charter expressly says the corporation has no power to do, any attempt to do is absolutely null and void.¹ The same is true of any act that is not within the enumerated powers of the charter. [Ashton v. Dashaway Assn., 84 Cal. 61, 23 Pac. 1091; Hutchinson v. S. I. & I. Co., 53 Cal. 622.] Such acts cannot validly be done, and cannot be ratified. [Hall v. Auburn, etc. Co., 27 Cal. 255.] There is no conflict of decisions on this point. But whether a corporation can be estopped to plead ultra vires as a defense is not yet permanently settled in this state.

In an early case it is held that in relation to the contracts of a corporation where the question is one of capacity or authority to contract, arising either on a question of regularity of organization or of power conferred by the charter, a party who has had the benefit of the

¹Griffith v. N. Y. Ins. Co., 101 Cal. 627, 36 Pac. 113; Kohl v. Litten-thal, 81 Cal. 378, 22 Pac. 689; Bank v. Wickersham, 99 Cal. 655, 34 Pac. 441.

contract cannot be permitted in an action founded on it to question its validity. [*Argenti v. S. F.*, 16 Cal. 255.] From the time of announcing this decision to the reversal of *Kennedy v. Cal. Savings Bank*, 101 Cal. 495, 35 Pac. 1039, by the U. S. Supreme Court [*Bank v. Kennedy*, 167 U. S. 362], there is an unbroken line of decisions that a corporation or its members [*Mitchell v. Beckman*, 64 Cal. 117, 28 Pac. 110], who have received the benefit of the performance of the other party to the contract, are estopped in a suit on the contract to plead that it is ultra vires [*Mitchell v. Beckman*, 64 Cal. 117, 28 Pac. 110; *Granger's Business Ass. v. Clark*, 67 Cal. 634, 8 Pac. 445; *Main v. Casserly*, 67 Cal. 127, 7 Pac. 426; *Magee v. Pac. etc. Co.*, 98 Cal. 678, 33 Pac. 772], this last case holding that a railroad corporation engaged in hotel-keeping was estopped to plead ultra vires in an action by a guest for damages caused by negligence.

SECTION 71—SAME.

It is not always apparent in these decisions, *supra*, whether the plaintiff is allowed to recover on contract, as was held in one of them [*Main v. Casserly*, 67 Cal. 127, 7 Pac. 426], or on an implied obligation to pay for benefits received—a quantum meruit—as was held in another. [*Visalia, etc. Co. v. Sims*, 104 Cal. 326, 37 Pac. 1042.] There is an unfortunate confusion of the doctrine of estoppel with the doctrine of quasi-contracts. It will be noted that the

cases¹ are all cases wherein the corporation had no power to do the acts in question for any purpose whatever. In the Kennedy case, *supra*, the power in dispute was the power to take and hold stock in another corporation. It was conceded that the corporation (which was a national bank) had power to take and hold stock for some purpose, as, for example, to save itself from loss, but did not have power to take the stock, under the circumstances in question. The California Supreme Court held that the corporation, having received dividends on the stock and having entered its name on the books as a stockholder, and therefore held itself out to creditors as a stockholder, was estopped, in a suit by the creditors, to plead that taking and holding the stock was ultra vires. The U. S. Supreme Court, in reversing this decision, declared that ultra vires acts are absolutely void and cannot be enforced by invoking the doctrine of estoppel. No distinction is drawn in either case between ultra vires in the sense that there was no power to take for any purpose, and ultra vires in the sense that there was no power to take for the purposes attempted.

Since the Kennedy case was announced, the California Supreme Court, after one dictum that the acts complained of therein were not ultra vires at all [*Knowles v. Sandercock*, 107

¹ *Hutchinson v. S. I. & I. Co.*, 53 Cal. 622; *Bates v. Coronado Beach Co.*, 109 Cal. 160, 41 Pac. 855; *Chemical Nat. Bank v. Havermale*, 120 Cal. 601, 52 Pac. 1071; *Gribble v. Columbus Brewing Co.*, 100 Cal. 67, 34 Pac. 527; *Union Co. v. Murphy's Flat Co.*, 22 Cal. 620; *Pauly v. Coronado Beach Co.*, 56 Fed. 428.

Cal. 629, 40 Pac. 1047], has conceded that the Kennedy decision is based on estoppel, and in a similar case respecting another national bank, has declared that it was bound, in interpreting the charter of national banks, to follow the interpretation of the U. S. Supreme Court. [Chemical Nat. Bank *v.* Havermale, 120 Cal. 601, 52 Pac. 1071.] But it has not, as yet, declared whether it will follow that ruling in cases that cannot be taken to Washington on appeal.

SECTION 72—SAME—(b) UNAUTHORIZED
PURPOSE.

There is no doubt of the proposition that acts done for an unauthorized purpose are void. [Sec. 71, *supra*.] They can be ratified, if ratification changes the purpose for which they were exercised from an unauthorized to an authorized one. But they cannot be enforced by estopping the corporation. [Taylor *v.* North Star, etc. Co., 79 Cal. 285, 21 Pac. 753; Kohl *v.* Lilienthal, 81 Cal. 378, 22 Pac. 689.] In the absence of proof, acts that a corporation can do for some purposes are presumed to have been validly done. Union Co. *v.* Murphy's Flat Co., 22 Cal. 620.

SECTION 73—SAME—(c) UNAUTHORIZED MODE.

The mode of exercise, wherever prescribed, being part of the corporate power, acts done in an unauthorized mode are not an exercise of corporate power. [Wallace *v.* Mayor of San Jose, 29 Cal. 181.] The term "*ultra vires*" is also applied to these acts. But to so apply it

is misleading, for these acts can be ratified by a subsequent authorization in the authorized mode [*McCracken v. S. F.*, 16 Cal. 591], or, where an oral agency would suffice, by accepting the benefits arising therefrom. [*Pixley v. West. P. R. R. Co.*, 33 Cal. 183, Sec. 2310 C. C.; *Gribble v. Columbus Buggy Co.*, 100 Cal. 67, 34 Pac. 527.] Also, a corporation can be estopped to assert unauthorized modes, as, for example, where the mode is prescribed by the by-laws. [*Underhill v. Santa Barbara Co.*, 93 Cal. 300, 28 Pac. 1049; *Illinois etc. Bank v. Pac. Ry. Co.*, 117 Cal. 332, 49 Pac. 197.] Acts, the mode of exercise of which is unauthorized, are, therefore, not governed by the same principles that regulate the effect of true ultra vires acts, and only for want of a better term are they called such. [See Chap. XVI, *post*, as to effects of acts done by the directors that only the directors and stockholders together can do; see also *Hall v. Crandall*, 29 Cal. 568.]

SECTION 74—SAME—WHO CAN ASSERT.

Thus far this chapter has dealt with ultra vires as a defense available to the corporation. Any person, however, who is not being sued on a contract made with the corporation, by which making or by receiving the benefits thereof he has been estopped to deny the corporation's power [*Camp v. Land*, 122 Cal. 167, 54 Pac. 839], can plead ultra vires as a defense to

any action, wherein the act so done is in issue.¹

¹ Illinois, etc. Bank v. Pac. Ry. Co., 117 Cal. 382, 49 Pac. 197; Bank of Shasta v. Boyd, 99 Cal., 604, 34 Pac. 837; Yancy v. Morton, 94 Cal. 558, 29 Pac. 1111; Fresno, etc. Co. v. Warner, 72 Cal. 379, 14 Pac. 37; Waterloo Turnpike Co. v. Cole, 51 Cal. 381; Williams v. Gold Hill M. Co., 96 Fed. 454.

CHAPTER IX.

RECEIVERS.

SEC. 75.—IN GENERAL.

SEC. 76.—RECEIVERS BEFORE DISSOLUTION.

SEC. 77.—RECEIVERS AFTER DISSOLUTION.

SEC. 78.—EFFECT OF APPOINTMENT.

SECTION 75—IN GENERAL.

There is no power in the courts of this state by virtue of their equity jurisdiction to appoint a receiver for a corporation. The power to appoint receivers is wholly statutory; is contained in two sections of the Code of Civil Procedure [Secs. 564-5], and no receiver can be appointed until the party making the application has stated facts which bring his case within those sections. *Murry v. Superior Court*, 129 Cal. 628, 62 Pac. 191; *La Societe Francaise v. Dist. Court*, 53 Cal. 495; *Fischer v. Superior Court*, 110 Cal. at 141, 42 Pac. 561; *Neall v. Hill*, 16 Cal. 146; *Havemeyer v. Superior Court*, 84 Cal. at 364, 24 Pac. 121; *People etc. Bank v. Superior Court*, 103 Cal. 27, 36 Pac. 1015; *Harrison v. Hebbard*, 101 Cal. 152, 35 Pac. 555.

"There is no power in a court of equity," says the court in *Neall v. Hill*, 16 Cal. 146, "to remove the officers of a corporation; there is provided at law a direct method for the accomplishment of that purpose. Courts of

equity have, therefore, no power to appoint receivers or to decree a sale of the property and settlement of the affairs of a corporation, for that would be to dissolve the corporation indirectly and equity has no such power."

SECTION 76—RECEIVERS BEFORE DISSOLUTION.

Receivers before dissolution can only be appointed pursuant to section 564, C. C. P. That section makes no special mention of corporations, except in subdivision 5, but the application of some of the other subdivisions to corporations has been judicially decided.

The second subdivision authorizing a receiver in actions to foreclose mortgages, when it appears that the mortgage security is in danger or is probably insufficient, applies to corporations and a receiver pendente lite to take possession of the mortgaged property can be appointed, even when the mortgagor is a corporation. *Illinois Trust etc. Bank v. Alvord*, 99 Cal. 407, 33 Pac. 1132.

The third subdivision authorizing the appointment of a receiver after judgment to carry it into effect is a substitution for the creditor's bill in equity, and applies to corporations whenever the power to carry out the judgment is not specially given to other persons. [*Fox v. Hale & Norcross M. Co.*, 108 Cal. 475, 41 Pac. 328; *Bates v. International Co.*, 84 Fed. 514.] Thus, there is no power to appoint a receiver for a corporation by virtue of a judgment of ouster in quo warranto proceedings [*Havemeyer v. Sup. Ct.*, 84 Cal.

327, 24 Pac. 121], because the law provides that the directors in office at time of dissolution have the right to wind up and distribute the corporate assets. C. C. 400.

The fifth subdivision authorizing receivers in cases where a corporation is insolvent or is in imminent danger of insolvency, do not authorize courts to appoint receivers for corporations for the following reason: There is no statute in California which confers upon a private person the right to bring an action to dissolve a corporation because it is insolvent, or to obtain relief by seizing its property or putting it in a receiver's hands; and as the appointment of a receiver is always ancillary to some action begun—there being no action to appoint a receiver merely—no private person can have a receiver for a corporation appointed. *La Societe Francaise v. Dist. Court*, 53 Cal. 495.

The last subdivision of the section, authorizing receivers in all other cases where receivers have heretofore been appointed by the usages of courts of equity can have no application to corporations, for courts of equity have no power to appoint receivers to take possession of the property of a corporation pending litigation. *Fischer v. Superior Court*, 98 Cal. 67, 32 Pac. 875; *Jacobs v. Supervisors*, 100 Cal. 121 at p. 129, 34 Pac. 630; *Loftus v. Fischer*, 117 Cal. 128, 48 Pac. 1030; *Murry v. Superior Court*, 129 Cal. 628, 62 Pac. 191; *Smith v. Superior Court*, 97 Cal. 348, 32 Pac. 322.

It will thus be seen that previous to the dissolution of a corporation, none of the subdivisions of this section authorize the appointment of a general receiver for a corporation; that is, a receiver who has power to assume the control and direction of its corporate property and business. Actions with respect to specific property allow of the appointment of a receiver during the litigation to preserve the "res;" this is the meaning of subdivision 2 (*supra*), but that is a far different thing from the appointment of a general receiver. As this section is the only one providing for the appointment of receivers before dissolution, no receiver can ever be appointed to take possession of the corporate property before the corporation has been judicially declared dissolved. [Havemeyer v. Sup. Ct., 84 Cal. 327, 24 Pac. 121.] Nor is there anything in the bank commissioner's act [Stats. 1877-8, p. 744; 1887, p. 90] which changes this rule with respect to banks. People's etc. Bank v. Sup. Ct., 103 Cal. 27, 36 Pac. 1015; Murry v. Am. Surety Co., 59 Fed. 345.

SECTION 77—RECEIVERS AND DISSOLUTION.

After dissolution, the code provides that on the application of any *creditor* or *stockholder* a receiver may¹ be appointed for the purposes of collecting and distributing the corporate assets. [C. C. P. 565; State Ins. Co. v. Sup. Ct., 101 Cal. 135, 35 Pac. 549.] This applica-

¹ "May" means "must." Havemeyer v. Superior Court, 84 Cal. 327, 24 Pac. 121.

tion by the creditor or stockholder is a new action brought after judgment of ouster in the quo warranto proceedings, and only upon this new application can the receiver here authorized be appointed.¹ In quo warranto, therefore, no receiver can ever be appointed.² Bringing that action does not per se dissolve the corporation,³ therefore section 564 C. C. P. does not apply,⁴ and after dissolution section 565 only allows a receiver on the application of a creditor or stockholder. The point was raised in a recent case that if the judgment in the quo warranto proceeding—which judgment can only be an injunction (ouster) and a fine⁵—imposes a fine the state is then a creditor to the extent of that fine and should therefore be allowed to ask for a receiver, but the court did not pass upon the question thus raised.

Summarizing, no general receiver of a corporation can ever be appointed before its dissolution, whether the application be made by a private party or the state; after its dissolution the state cannot have a receiver appointed, but a stockholder or creditor can.⁶ Truly it was said "that it is not the rule to

¹ Havemeyer v. Superior Court, 84 Cal. 327, 24 Pac. 121; Yore v. Superior Court, 108 Cal. 431, 41 Pac. 477.

² Same cases, and State Investment Co. v. Superior Court, 101 Cal. 135, 35 Pac. 549.

³ See Chap. V *supra*, Yore v. Superior Court, 108 Cal. 431, 41 Pac. 477.

⁴ Yore v. Superior Court, 108 Cal. 431, 41 Pac. 477.

⁵ Havemeyer v. Superior Court, 84 Cal. 327, 24 Pac. 121.

⁶ People's, etc., Bank v. Superior Court, 103 Cal. 27, 36 Pac. 1015. This case says the law still stands as in the French bank case, 53 Cal. 495.

appoint receivers in California." *People v. Union Bldg., etc., Assn.*, 127 Cal. 400, 59 Pac. 592.

SECTION 78—EFFECT OF APPOINTMENT.

"When a receiver is appointed the corporation's property is in the hands of the law.

* * * His possession is the possession of the court, for the benefit of all the persons interested, whether named in the action or not, and such possession cannot be disturbed without the consent of the court. No one claiming a right paramount to that of the receiver can assert it in any action, without the permission of the court. No sale can be made, debt paid or contract made without the court's consent. With the permission of the court the receiver can do anything the corporation might have done to make the most of the assets in his hands." *Pac. Ry. Co. v. Wade*, 91 Cal. 449, 27 Pac. 768.

CHAPTER X.

STOCK AND STOCKHOLDERS.

SEC. 79—CAPITAL STOCK DEFINED.

SEC. 80—SHARES OF STOCK.

SEC. 81—SAME—CONVERSION OF.

SEC. 82—POWER OF CORPORATION TO TAKE AND HOLD ITS OWN SHARES.

SEC. 83—SHARES—ATTACHMENT OF.

SEC. 84—SAME—SPECIFIC PERFORMANCE.

SEC. 85—CLASSIFICATION OF SHARES.

SEC. 86—RELATION BETWEEN HOLDER AND CORPORATION.

SEC. 87—SAME—CHARTER A CONTRACT.

SEC. 88—INCREASE AND DECREASE OF STOCK.

SEC. 89—DECREASING WITHOUT PREVIOUS PUBLIC NOTICE.

SECTION 79—CAPITAL STOCK DEFINED.

The phrase "capital stock" as employed in acts of incorporation is used to designate the amount of capital to be contributed by the stockholders for the purposes of the corporation. The amount thus contributed constitutes the "stock" or "capital stock" of the corporation. It is not used to indicate the value of the property of the corporation. To prove that the corporation's property is valueless is not to prove its stock valueless; it may still have a paid up capital. [Gifford v. Carvill, 29 Cal, 589.] The *value* of the stock may be

greatly increased by surplus profits or be diminished by losses, but the amount of the capital stock remains the same. The funds of the corporation may fluctuate. Its capital stock remains invariable, save by legislative enactment. This distinction between the value of a corporation's property and its capital stock is perfectly familiar. *Selling* any or all of its property is therefore not within the prohibition [C. C. 309] against dividing or paying to the stockholders any part of the capital stock. [Miner's Ditch Co. v. Zellerbach, 37 Cal. 543.] But by this is not meant that a corporation can *give* to its stockholders any part of its property. (Capital stock, as used in this prohibition [C. C. 309] is intended to mean all the capital of the corporation on which it transacts its business, whether such capital consists of money, property or other valuable commodities. [Martin v. Zellerbach, 38 Cal. 300; Moore v. Lent, 81 Cal. 502, 22 Pac. 875.]) What is meant is that a corporation can sell its property for a consideration to be received by the corporation, but cannot give its property to its stockholders directly, or indirectly by a sale, the consideration of which is to be received by them and not by it. [Martin v. Zellerbach, 38 Cal. 300; Kohl v. Lilienthal, 81 Cal. 378, 22 Pac. 689.] "Capital stock" therefore has two meanings under this section; one, as applied to sales, another when applied to gifts. In the latter case it refers to all the assets of the corporation, and the meaning is that they are vested in

the corporation as a trust for the benefit of both stockholders and creditors. *Kohl v. Lilienthal*, 81 Cal. 378, 22 Pac. 689; *McCormick v. Springfield, etc. Co.*, 66 Cal. 361, 5 Pac. 617; *Johnson v. Kirby*, 65 Cal. 482, 4 Pac. 458; *Clark v. San Francisco*, 53 Cal. at 311; *Wright v. Oroville, etc. Min. Co.*, 40 Cal. 20; *Miner's Ditch Co. v. Zellerbach*, 37 Cal. at 591; *Gashwiler v. Willis*, 33 Cal. 11; *Gorham v. Gilson*, 28 Cal. at 484; *Martin v. Zellerbach*, 38 Cal. at 309; *Moore v. Lent*, 81 Cal. 502, 22 Pac. 875.

As used in the taxation laws, stock or capital stock includes the franchise or franchises of the corporation and all else that it owns or has. [*Burke v. Badlam*, 57 Cal. 594.] When this is taxed, all its property is taxed, therefore to tax shares of stock in addition would be double taxation. [Pol. C. 3608.] The stock, as property, has a situs in the home of the corporation. *Dow v. Gould & Curry Mfg. Co.*, 31 Cal. 630.

SECTION 80—SHARES OF STOCK.

Shares of stock are an interest in the capital stock of the corporation; they are an undivided interest therein and possess no intrinsic value over and above their proportionate part of the value of the property of the corporation, which they stand for and represent. [Pol. C. 3608; *Burke v. Badlam*, 57 Cal. 594.] When "shares of stock" are spoken of in statutes, it generally means the subscribed, issued or outstanding shares. *Market Street R. R. Co. v. Hellman*, 109 Cal. 571, 42 Pac. 225.

The stockholders, that is, the owners of the shares [C. C. 298], do not own any specific interest in the corporate property. They have no legal or equitable title to any particular portion of the corporation property, but all its property is vested in the corporation, subject to an active trust to carry out the purposes for which it was incorporated. *Smith v. Maine Boys' Tunnel Co.*, 18 Cal. 112.

Shares of stock are personal property, which comes into existence only when legally issued by the corporation. Until issued, they have no legal existence as property.¹ Thus the refusal of a corporation to issue stock cannot be a conversion. [*Hawkins v. Mansfield, etc. Co.*, 52 Cal. 513; *Morrison v. Gold Mt., etc. Co.*, 52 Cal. 306.] When issued, each share of stock is an undivided interest in the stock of the corporation and where the shares are not divided into different kinds, each share represents an equal interest. [*Atkins v. Gamble*, 42 Cal. 86.] The certificates which represent the shares may be differently numbered or marked, but one share is like to another share in every respect. This similarity does not mean that the different shares are identical [*Mahoney v. Caperton*, 15 Cal. 314], but it has led to an anomaly in the law of bailments.

¹ *Loveland v. Alvord, etc. Co.*, 76 Cal. 562, 18 Pac. 682; *Morrison v. Gold Mt., etc. Co.*, 52 Cal. 306; there is nothing inconsistent in *Brewster v. Hartley*, 37 Cal. 15, as the shares in that case had been issued in trust.

SECTION 81—SAME—CONVERSION OF.

It is a general rule of bailments that to alienate the thing bailed is a conversion, but an exception to this rule is made in certain cases of pledged or bailed stock. The point first came before the California Supreme Court for decision in *Hawley v. Brumagim*. 33 Cal. 394. The defendant in that case had sold his stock to the plaintiff, guaranteeing that it would be worth \$200 by a certain date, and that if plaintiff would hold it until such date and it had not risen in value to the two hundred dollar mark, defendant would repurchase it. The stock failed to raise and plaintiff sues on the guarantee. As soon as plaintiff purchased the stock from defendant he had it transferred into his own name on the company's books, surrendering the old certificates and taking new ones made out to himself. Defendant claims that by this transfer plaintiff exchanged the stock he bought for new stock, and therefore had failed to "hold" the stock as the guarantee requires. This defense was declared invalid, the court holding that the cancellation of the old certificates and the issuance of new certificates did not work any change in the stock itself. "The shares remained the same from first to last. The stock is one thing and the certificate is another; the former is the substance, the latter is the evidence of it." It will be noted that the decision in this case turns wholly on the nature of *certificates* of stock, and that the

decision would have been the same if only one share of stock had been bought and sold, but the reasoning of the opinion is broad enough to mean that certificates are not necessarily ascribable to any distinct or definite share, and such doctrine was read out of this case in *Atkins v. Gamble*, 42 Cal. 86, which introduced the anomaly into California law, and which is a leading case today. *Atkins* pledged certain stock to *Gamble*, indorsing the certificates to the latter. *Gamble* was president of the corporation and held a large number of shares. In selling certain of his own shares he transferred and indorsed to the purchaser the certificates he had received from *Atkins*. These certificates were delivered up and cancelled in the usual course. *Atkins* then paid his debt to *Gamble* and demanded "his stock." *Gamble* was at all times ready and willing to deliver an equal number of shares represented by other certificates. *Atkins* refused to receive and brings this action for conversion. Judgment was given for the defendant, *Gamble*. The court held: "The certificate is only evidence that the holder is entitled to an undivided share in the assets of the corporation. It is not a security in any sense, but only evidence of title. All undivided shares are alike and certificates for the same amount are the precise equivalent of each other. For these reasons a different rule as to conversion applies to shares of stock than to other personal property bailed. The return of any certificate of

the like amount is a return of the identical thing bailed, *e. g.*, an undivided share. There is, if anything, only a technical conversion, with no actual damages."

As thus stated, the rule is broader than the real decision, and broader than the rule as it exists to-day. In *Hayward v. Rogers*, 62 Cal. 348, it is accurately stated thus: "When a man has stock of his own and stock of another held in pledge and sells part of the stock, the law presumes he is selling his own stock, no matter what certificates he transfers, and there is, therefore, no conversion; provided, always he retains enough to satisfy the pledgor should the latter offer to redeem." Accurately, then, the rule is a rule of presumption. *Krause v. Woodward*, 110 Cal. 638, 42 Pac. 1085; see also *Thompson v. Toland*, 48 Cal. 99; *Atkins v. Gamble*, 42 Cal. 86; *Payne v. Elliot*, 54 Cal. 339.

SECTION 82—POWER OF A CORPORATION TO TAKE AND HOLD ITS OWN SHARES.

Another anomaly peculiar to shares of stock is that, for some purposes, *e. g.*, to save itself from loss or for delinquent assessment, a corporation can take and hold its own issued stock without extinguishing the same.¹ This is anomalous because the relation between stockholder and corporation is substantially that of debtor and creditor [see Sec. 86, *post*],

¹*Bank v. Wickersham*, 99 Cal. 655, 34 Pac. 414; *Ralston v. Bank of California*, 112 Cal. 208, 44 Pac. 476; *Robinson v. Gold and Silver M. Co.*, 72 Cal. 32, 13 Pac. 65.

and ordinarily a purchase by a debtor of his own debt extinguishes the debt. Section 344 of the Civil Code provides "that all purchases of its own stock made by any corporation vest the legal title to the same in the corporation, and the stock so purchased is held subject to the control of the stockholders, who may make such disposition of the same as they deem fit, in accordance with the by-laws of the corporation or vote of a majority of all the remaining shares. Whenever any portion of the capital stock of a corporation is held by the corporation by purchase, a majority of the remaining shares is a majority of the stock for all purposes of election or voting on any question at a stockholders' meeting."

Shares thus purchased by the corporation are not extinguished in the sense that they could not be reissued,¹ nor does such a purchase reduce the amount of the capital stock that the corporation was authorized to have by its articles. It does, however, reduce the amount of the subscribed capital stock, but with leave to the corporation to reissue to any one subscribing. *Bank v. Wickersham*, 99 Cal. 655, 34 Pac. 444; *Market St. R. R. Co. v. Hellman*, 109 Cal. 571, 42 Pac. 225.

Equal to its power in certain cases to take full legal title to its stock (*supra*) is the corporation's power in the same cases to take a qualified title, or an equitable title [*Brewster v. Hartley*, 37 Cal. 15]; and likewise stock

¹ *Bank v. Wickersham*, 99 Cal. 655, 34 Pac. 444; *Ralston v. Bank of California*, 112 Cal. 208, 44 Pac. 476.

thus held in trust or in pledge for the corporation cannot be voted or represented for any purpose at corporate meetings. *Brewster v. Hartley*, 37 Cal. 15; *Market St. R. R. Co., v. Hellman*, 109 Cal. 571, 42 Pac. 225.

The stockholders have the sole power to dispose of stock so taken and held; the corporation cannot alienate it without their consent, and its creditors cannot seize it on execution or attachment. *Robinson v. Gold and Silver M. Co.*, 72 Cal. 32, 13 Pac. 65.

SECTION 83—SHARES—ATTACHMENT OF.

Shares of stock are personal property, within the meaning of the statute authorizing attachments. [*Lovelace v. Alvord etc. Co.*, 76 Cal. 562, 18 Pac. 682] The writ of attachment is levied on stock or shares, or on an interest in stock or shares of any corporation or company, by leaving with the president or other head of the same, or the secretary, cashier, or other managing agent thereof, a copy of the writ, and a notice stating that the stock or interest of the defendant is attached in pursuance of such writ. C. C. 542.

SECTION 84—SAME—SPECIFIC PERFORMANCE.

Specific performance of contracts to buy or sell stock is granted in cases where the stock has a unique value. [*Chater v. S. F. Sugar Co.*, 19 Cal. 219.] Stock that has no present value and is held for investment is unique in this sense, and the inference seems justifiable that our courts would say the same of any

stock that had no market value or could not be bought or sold on exchange. *Krause v. Woodward*, 110 Cal. 638, 42 Pac. 1085; see also *Hitchcock v. McElrath*, 72 Cal. 565, 14 Pac. 305; *Green v. Cal. R. R. Co.*, 107 Cal. 667, 40 Pac. 1053; C. C. 3384, 3390.

SECTION 85—CLASSIFICATION OF SHARES.

There is nothing in the statutes or decisions of this state as to the power of a corporation to classify its stock or to issue different kinds of stock; nor is there anything in the law of California which forbids such acts.

In *Murphy v. Pac. Bank*, 130 Cal. 542, 62 Pac. 1059, a by-law was upheld that gave a preference, in distribution of assets in case of insolvency, to non-stockholding creditors over creditors who were also stockholders. [Compare *Richardson v. Chicago Packing Co.*, 63 Pac. 74 (Cal. 1901)]. As preferred stock is only common stock, with a preference in dividends or at dissolution, or both, this case might be deemed an argument in favor of the proposition that California corporations have the power to issue classified stock.

SECTION 86—RELATION BETWEEN HOLDER AND CORPORATION.

The relation between a corporation and a stockholder is more nearly akin to that of debtor and creditor than to any other jural

relation.¹ The stockholder can sue the corporation at law,² and the stockholder owes no duties of fidelity to the corporation,³ which doctrines show that the relation is not a true trust relation. As the corporation is not bound by any acts or admissions of a stockholder, unless he is acting by express authority,⁴ the relation is not one of agency, and as a stockholder can contract with the corporation in all respects like any stranger can, the relationship is not fiduciary in any sense.⁵ A surety for a corporation is not deprived of any of the rights of a surety by also being a stockholder,⁶ and that a creditor is also a stockholder does not deprive him of any of the rights of creditors; at most it postpones him at dissolution to non-stockholding creditors. *Richardson v. Chicago Packing Co.*, 63 Pac. 74 (Cal. 1901).

SECTION 87—SAME—CHARTER A CONTRACT.

One who becomes a stockholder, whether by purchase directly from the corporation or by transfer from a former holder entered on the books, or becomes a member of a corporation having no stock, assents to and becomes bound by the charter and by-laws of the corporation.⁷ In this sense the charter is a con-

¹ *Reiston v. Bank of California*, 112 Cal. 208, 44 Pac. 476.

² *Barnstead v. Empire M. Co.*, 5 Cal. 299.

³ *Fox v. MacKay*, 125 Cal. 57, 57 Pac. 670.

⁴ *Shay v. Tuolumne W. Co.*, 6 Cal. 74.

⁵ *Fox v. MacKay*, 125 Cal. 57, 57 Pac. 670; see also *Merchants' Ad. Sign Co. v. Sterling*, 124 Cal. 429, 57 Pac. 468.

⁶ *Pelton v. San Jacinto, etc., Co.*, 113 Cal. 21, 45 Pac. 12.

⁷ *Robinson v. Irish, etc., Society*, 67 Cal. 135, 7 Pac. 435; *Ashton v. Dashaway Assn.*, 84 Cal. 61, 23 Pac. 1091.

tract between the stockholder and the corporation. It is immaterial whether or not the stockholder signs the articles of incorporation or the by-laws.¹ If a subscriber to formative stock, those who signed the articles signed as his agents;² if his stock is acquired subsequent to organization, causing his name to be entered on the books as a stockholder, binds him as such.

Every ultra vires or unauthorized act is at once a breach of charter between the corporation and the state and a breach of contract between the corporation and each stockholder. *McDermont v. Anaheim etc., Water Co.*, 124 Cal. 112, 56 Pac. 779.

In corporations not for profit, the admission of a member into the society is not by contract, but simply because the members chose to have him. It is therefore competent in such societies to provide by by-law that members may be expelled for cause. *Peyre v. Mutual Relief Soc.*, 90 Cal. 240, 27 Pac. 191.

SECTION 88—INCREASE AND DECREASE OF STOCK.

It has already been seen [Sec. 79 *supra*] that no loss or increase of its property, and no fluctuation in the value of that property, affect in any way the amount of the corporation's capital stock, and that the amount can only be increased or decreased by legislative enactment. The constitution, article XII,

1 *McFadden v. County of Los Angeles*, 74 Cal. 571, 16 Pac. 397.

2 *San Joaquin Co. v. Beecher*, 101 Cal. 70, 35 Pac. 349.

section 11, provides that "the stock of corporations shall not be increased except in pursuance of general law, nor without the consent of the persons holding the larger amount in value of the stock, at a meeting called for that purpose, giving sixty days' public notice, as may be provided by law." This provision is not self-executing [*Ewing v. Oroville Mg. Co.*, 56 Cal. 649], but pursuant to it the legislature has enacted a general law under which capital stock may be increased or decreased [C. C.359], which law contains the following language:

"Every corporation may increase or diminish its capital stock, subject to the following provisions.

"First: The capital stock of a corporation may be increased or diminished at a meeting of the stockholders by a vote representing at least two-thirds of the subscribed capital stock; such meeting must be called by the board of directors, and notice must be given by publication in a newspaper published in the county where the principal place of business of such corporation is located, or if there be none published in said county, then in a newspaper to be designated by the board of directors in the order calling the meeting,

"Second: The notice must specify the object of the meeting and the amount to which it is proposed to increase or diminish the capital stock; the time and place of holding the meeting, which latter must be at the principal place of business of the corporation, and

at the building where the board of directors usually meet. The notice herein provided must be published at least once a week for at least sixty days. The capital stock cannot be diminished to an amount less than the indebtedness of the corporation.

"Fourth: In addition to the notice by publication, the secretary of the corporation shall also address a notice to each of the stockholders whose names appear upon the company's books as sufficiently addressed, at his place of residence if known, and if not known, then at the principal place of business of the corporation, which notice shall be mailed to such stockholders at least thirty days before the day appointed for such meeting.

"And upon such increase or diminution of the capital stock being made as herein provided, a certificate must be signed by the president and secretary of the meeting, and a majority of the directors, showing a compliance with the requirements of this section, the amount to which the capital stock has been increased or diminished, and the amount of the stock represented at the meeting, and the whole vote by which the object was accomplished. The certificate must be filed in the office of the clerk of the county where the original articles of incorporation are filed, and a certified copy thereof in the office of the secretary of state; and thereupon the capital stock shall be so increased or diminished.

"When the by-laws of the corporation prescribe the paper in which notices of meetings

are to be published, notices herein provided for shall be published in such paper, unless publication thereof shall have ceased."

SECTION 89—DECREASING WITHOUT PREVIOUS PUBLIC NOTICE.

This section of the code [C. C. 359] contains all the law of the state applicable to the increase or decrease of capital stock. It is expressly provided in the section allowing corporations to amend their articles of incorporation that nothing contained in that section must be construed to authorize any corporation to diminish its capital stock. [C. C. 362.] It is not perfectly clear why this latter section speaks only of "diminishing" and not of "increasing" as well, but the apparent reason is this: The constitutional provision, article XII, section 11, requiring sixty days' public notice, relates only to *increasing*, and not to decreasing the capital stock; and as the legislature has provided a general law [C. C. 359] carrying out the constitutional provision, any law that provided for increasing the capital stock without such notice would be unconstitutional and void. [Ewing v. Oroville Mg. Co., 56 Cal. 649.] But the constitution does not prohibit *decreasing* the capital stock without sixty days' public notice, and therefore a law authorizing a decrease without such notice would be constitutional and valid; and as the section under discussion [C. C. 362] allows of the amending of the articles of incorporation on written

consent of the stockholders representing two-thirds of the subscribed capital stock, and as decreasing the amount of the capital stock is an amendment of the articles, the section would have allowed, had the qualification not been inserted, the capital stock to be diminished by written consent of those holding two-thirds of the stock.

Inserting this qualification is therefore an assertion on the part of the legislature that it was not intended to allow the stock to be diminished by the written consent of the holders of two-thirds of the stock. In section 317, Civil Code, however, it is provided that when all the stockholders or members of a corporation are present at any meeting, however called or notified, and sign a written consent thereto on the records of such meeting, the doings of such meeting are as valid as if had at a meeting legally called and noticed. All the stockholders, therefore, by attending a meeting and signing the written consent, can diminish the capital stock, without the sixty days' public notice provided for in the general law. [C. C. 359.] [For a general discussion of the effect of section 317 Civil Code, see Chap. XIV, *post.*]

CHAPTER XI.

SHARES—HOW ISSUED AND ACQUIRED.

- SEC. 90. - SUBSCRIPTION TO FORMATIVE STOCK.
- SEC. 91. - SAME—ENFORCEABLE BY CORPORATION.
- SEC. 92. - SAME.
- SEC. 93. - DECEIT IN SUBSCRIPTION—CONTRACT A CRIME.
- SEC. 94. - LIABILITY FOR CALLS.
- SEC. 95. - COLLATERAL AGREEMENTS.
- SEC. 96. - PURCHASE OF STOCK.
- SEC. 97. - ISSUE AT MARKET VALUE.
- SEC. 98. - FICTITIOUS ISSUE A CRIME.
- SEC. 99. - OVERISSUE AND EFFECT.
- SEC. 100. - CERTIFICATES OF STOCK.
- SEC. 101. - RIGHT TO DEMAND CERTIFICATES.

SECTION 90—SUBSCRIPTION TO FORMATIVE STOCK.

Subscription to stock in a corporation about to be formed is defined in *Marysville Co. v. Johnson*, 93 Cal. 538, 29 Pac. 126, which case declares that such a "subscription creates a contract between the incorporators for the benefit of the proposed corporation, and on which it may sue." Placing one's name on a subscription list is therefore the acceptance of an offer, and creates a contract between all the subscribers. But the corporation is not a party to the contract, for it is not in existence when the contract is made. [*Hawkins v. Mansfield etc., Co.*, 52 Cal. 513; *Morrison v. Gold Mt. etc., Co.*, 52 Cal. 306.] It cannot be sued thereon, and therefore is not bound to fulfill

any of the promises made by the incorporators in its behalf, as for example, the promise to issue stock. *West v. Crawford*, 80 Cal. 19, 21 Pac. 1123; *Hawkins v. Mansfield etc., Co.*, 52 Cal., 513; *Morrison v. Gold Mt. etc., Co.*, 52 Cal. 306.

Whether a subscriber who fails to fulfill his promise to take stock can be sued by the other subscribers for damages, has never been decided in this state, but under the holding that the subscription is a contract between all the subscribers, it is submitted the action would lie. [See *Pac. Fruit Co. v. Coon*, 107 Cal. 447, 40 Pac. 542.] Ordinarily a subscription to the formative stock of a corporation is an acceptance of an offer made by those incorporators who are to be erected into a corporation, and makes the subscriber a stockholder the moment the corporation comes into existence. This is not the rule in California. Subscription does not make the subscriber a shareholder¹ and gives him no claims on the corporation until it has accepted his subscription by adopting as its own the contract of its incorporators.² A refusal by the corporation to place the subscriber's name on its books as a shareholder and issue certificates to him gives him no right of action against it,³ unless he can prove that it has accepted the subscription.⁴ This result is due to treating the sub-

1 *West v. Crawford*, 80 Cal. 19, 21 Pac. 1123.

2 *Chater v. S. F. Sugar Co.*, 19 Cal. 219; *Morrison v. Gold Mt., etc., Co.*, 52 Cal. 306; *Hawkins v. Mansfield, etc., Co.*, 52 Cal. 513; *West v. Crawford*, 80 Cal. 19, 21 Pac. 1123.

3 See cases preceding.

4 *Chater v. S. F. Sugar Co.*, 19 Cal. 219.

scription contract as if it were an ordinary contract of the promoters. [For promoters' contracts see chapter XXI, *post.*]

SECTION 91—SAME—ENFORCIBLE BY CORPORATION.

From the point of view of the corporation a subscription to its formative stock is the creation by the subscriber of a simple contract¹ to become a stockholder, with an option in the corporation to accept or refuse to receive him as a stockholder in accordance with the terms of his offer. A subscription accepted makes the subscriber a stockholder.² Acceptance can be made in any way an offer to contract can be accepted. Receiving payment for the subscription in cash or property is an acceptance,³ and a simple notification of acceptance, without any payment is equally efficacious because a corporation can give credit for its stock as well as for any other property sold by it.⁴ Bringing suit on the contract is an offer of acceptance in terms.⁵ A corporation can be estopped to deny that it has accepted the subscriber as a

1 *Jefferson v. Hewitt*, 95 Cal. 535, 30 Pac. 772; see also Sec. 90, *supra*.

2 *Mitchell v. Beckman*, 64 Cal. 117, 28 Pac. 110.

3 *Chater v. S. F. Sugar Co.*, 19 Cal. 219; *Calif. Hotel Co. v. Callender*, 94 Cal. 120, 29 Pac. 859.

4 *Mitchell v. Beckman*, 64 Cal. 117, 28 Pac. 110.

5 *Marysville Co. v. Johnson*, 93 Cal. 538, 29 Pac. 126; *Auburn Opera, etc. Asso. v. Hill*, 113 Cal. 382, 45 Pac. 695.

stockholder,¹ as for example, when the amount of his subscription is set forth in the articles of incorporation.² This is in reality a true acceptance and not an estoppel.³ The articles must be held to limit the power of the corporation so that it can bind as stockholders only those named in the articles and to the amounts mentioned.⁴

SECTION 92—SAME.

The contract of subscription being a simple contract subject to all defenses and rules of construction of contracts in general,⁵ can be enforced by the corporation only in terms.⁶ One who has made a conditional contract, the condition of which has not happened, is not liable on the contract and cannot be held thereon, even if the corporation enters his name as a stockholder on the books, unless he assents thereto. *Mudgett v. Horrell*, 33 Cal. 25.

Ordinarily the full subscription to all the proposed capital stock is not a condition precedent to the consummation of the contract of membership or the formation of the corpora-

1 *Monterey, etc. R. R. Co. v. Hildreth*, 53 Cal. 123.

2 *Monterey, etc. R. R. Co. v. Hildreth*, 53 Cal. 123; *California Hotel Co. v. Callender*, 94 Cal. 120, 29 Pac. 859.

3 *West v. Crawford*, 80 Cal. 19, 21 Pac. 1123; *San Joaquin Co. v. Beecher*, 101 Cal. 70, 35 Pac. 349.

4 *Monterey, etc. R. R. Co. v. Hildreth*, 53 Cal. 123, explained in *San Joaquin Co. v. Beecher*, 101 Cal. 70, 35 Pac. 349.

5 *Jefferson v. Hewitt*, 95 Cal. 535, 30 Pac. 772.

6 *West v. Crawford*, 80 Cal. 19, 21 Pac. 1123; *Marysville Co. v. Johnson*, 93 Cal. 538, 29 Pac. 126; *Ventura R. R. Co. v. Hartman*, 116 Cal. 260, 48 Pac. 65; *Maryville, etc. Co. v. Johnson*, 109 Cal. 192, 41 Pac. 1016; *San Joaquin Co. v. West*, 94 Cal. 399, 29 Pac. 785; *Monterey, etc. R. R. Co. v. Hildreth*, 53 Cal. 123.

tion. There is no statute in this state on the subject and therefore without an express condition in the contract, no such condition will be implied. *Dallemand v. O. F. Sav. Bank*, 74 Cal. 599, 16 Pac. 497; *West v. Crawford*, 80 Cal. 19, 21 Pac. 1123.

Where such a condition is expressed, there is no liability on the part of the subscriber until it has been unqualifiedly complied with. Subsequent ratification is unavailing. [*Cal. So. Hotel Co. v. Russell*, 88 Cal. 277, 26 Pac. 105; *Santa Cruz R. R. v. Schwartz*, 53 Cal. 106.] When the price of shares is stated in the subscription, a subscriber cannot be made to take shares of a greater par value [*Mahan v. Wood*, 44 Cal. 462], and if the subscription is to a proposed electric lighting company, the subscriber cannot be compelled to become a stockholder in a company whose articles authorize to furnish both light and power. *Marysville Co. v. Johnson*, 109 Cal. 192, 41 Pac. 1016.

The contract can be enforced by attachment on other property of the subscriber, for the corporation has no lien on the stock for the unpaid price. *Lankershim Co. v. Herberger*, 82 Cal. 600, 23 Pac. 134.

The contract cannot be altered or rescinded, except for fraud or mistake, without the unanimous consent of all the stockholders. *Pac. Fruit Co. v. Coon*, 107 Cal. 447, 40 Pac. 542; *Tulare Sav. Bk. v. Talbot*, 63 Pac. 172 (Cal. 1900).

SECTION 93—DECEIT IN SUBSCRIPTION-CONTRACT A CRIME.

It is a crime—a misdemeanor—to sign the name of a fictitious person to any subscription or agreement to take stock in any corporation or to sign to any subscription or agreement the name of any person, knowing that such person has not the means or does not intend in good faith to comply with all the terms thereof, or under any understanding or agreement that the terms of such subscription are not to be complied with or enforced. P. C. 557.

It is also a misdemeanor to unauthorizedly subscribe the name of another to, or insert the name of another in any prospectus, circular, or other advertisement or announcement of any corporation with intent to permit the same to be published, and thereby to lead persons to believe that the person whose name is so subscribed is an officer, agent, member, or promoter of the corporation. P. C. 559.

• SECTION 94—LIABILITY FOR CALLS.

Subscribers to formative stock are liable to pay for the same by virtue of two different relations. [Auburn Opera etc. Assn. v. Hill, 113 Cal. 382, 45 Pac. 695.] When their subscription is accepted by the corporation and they thus become stockholders, they are liable to pay the purchase price, when called upon by assessments on their stock, levied pursuant to law. [See Chap. XIII, *post*; Cal.

Sugar Co. *v.* Shafer, 57 Cal. 396; Ventura R. R. Co. *v.* Hartman, 116 Cal. 260, 48 Pac. 65.] In addition to this liability, if there is in the contract of subscription an express and absolute promise to pay the subscription price to the corporation or to any designated agent, a simple contract action lies against the stockholder for the purchase price. [West *v.* Crawford, 80 Cal. 19, 21 Pac. 1123; Marysville Co. *v.* Johnson, 93 Cal. 538, 29 Pac. 126.] This express promise to pay is enforceable without any levy of assessment. [Tulare Sav. Bank *v.* Talbot, 63 Pac. 172 (Cal. 1900).] To pay "as required" is not an absolute subscription [Cal. Sugar Co. *v.* Shafer, 57 Cal. 396]; to pay "when and as demanded by the corporation" is. Ventura R. R. Co. *v.* Hartman, 116 Cal. 260, 48 Pac. 65.

SECTION 95—COLLATERAL AGREEMENTS.

When stock is issued for less than par or for labor or property, agreements by the corporation to consider it fully paid stock, if made in good faith, are binding on the corporation, the stockholders and the subscriber. [Richardson *v.* Chicago Packing Co., 63 Pac. 74 (Cal. 1900).] But such collateral agreements will not be implied. A contract to buy stock for \$34, paying one dollar a month for thirty-four months, is to be construed, not as an agreement to consider the stock fully paid, but to pay for it without the necessity of assessments being levied. Tulare Sav. Bank *v.* Talbot, 63 Pac. 172 (Cal. 1900).

The effect of collateral agreements on creditors' rights will be considered in chapter XIX, *post*.

SECTION 96—PURCHASE OF STOCK.

One who purchases stock from a shareholder or from the corporation and causes the transfer or purchase to be entered on the books of the corporation becomes a stockholder. The relation between the parties to a transfer is immaterial. The transfer may be in trust or in pledge, but if entered on the corporation's books, the trustee or the pledgee becomes the shareholder. *Brewster v. Hartley*, 37 Cal. 15.

There is no statute in California that compels a purchaser of stock, whether for cash or for property, to pay the par value thereof, either to the corporation or its creditors, without a contract to that effect.¹ The purchaser from the corporation is, therefore, indebted, as a purchaser, only for the amount he agreed to pay,² and his transferee takes the stock subject only to the same conditions.³ If the stock is sold by the corporation as fully paid stock and unassessable, no action to recover the unpaid purchase price lies at the instance of the corporation or its stockholders.⁴ Stock bought from the corporation after its formation, whether bought for money or property is

1 *In re So. Mountain C. M. Co.*, 7 Sawyer 30; *Kellerman v. Maser*, 116 Cal. 416, 48 Pac. 377.

2 *Id.*; also *Green v. Abietine Med. Co.*, 96 Cal. 322, 31 Pac. 100.

3 *Visalia, etc. R. R. Co. v. Hyde*, 110 Cal. 632, 43 Pac. 10; *Stockton etc. Works v. Hauser*, 109 Cal. 1, 41 Pac. 807.

4 *Green v. Abietine Med. Co.*, 96 Cal. 322, 31 Pac. 100.

bought and held under the same condition if acquired by an original subscription. *ton etc. Works v. Hauser*, 109 Cal. 1, 4807.

For the unpaid subscription price the stockholder on the books is liable whenever the corporation sees fit to call it in;¹ the propriety or necessity of a call rests solely in the directors. This liability for the unpaid subscription price is termed the liability for "calls," and is to be sharply distinguished from the stockholders' liability for assessments. It is true that without an absolute agreement to pay, "calls" can only be made by resolution of the board of directors, *i. e.*, assessment; but this does not mean that calls are assessments in the true sense of that term. Calls are a liability of the subscriber or his assignees, arising out of the contract to pay for the stock; assessments are a liability of the stockholders arising out of the contract to become a stockholder. Much confusion results from a failure to distinguish between calls and assessments. See Assessments, Chap. XIII, *post*.

SECTION 97—ISSUES AT MARKET VALUE.

Following a similar provision in many other state constitutions, our constitution provides [Art. XII, Sec. 11] that no corporation shall issue stock or bonds, except for money paid,

¹ *Visalia, etc. R. R. Co. v. Hyde*, 110 Cal. 632, 43 Pac. 10.

labor done, or property actually received,¹ and all fictitious increase of stock or indebtedness shall be void. The Civil Code, in terms, makes the same provision [C. C. 359], and these are the only two legislative enactments on this subject in force to-day, except a certain section of the Penal Code [Sec. 560], to be presently noticed.

The constitution of 1849 was silent as to for what stock might be issued, but the general corporation law of 1850 [Stats. p. 347] and the act of 1861 [Stats. p. 607], relating to railroad corporations, contained provisions similar in all material respects to the present existing law. Construing these earlier statutes, before the adoption of the present constitution or codes, the Supreme Court held that a check drawn upon a bank in which the drawer had no funds, no matter how good his credit, was not "cash" [People v. Chambers, 42 Cal. 201], while a check, which before its acceptance by the corporation was guaranteed by the bank on which it was drawn, was "cash," and substantially complied with the statute. [People v. Stockton, etc. R. R. Co., 45 Cal. 306.] The cases were distinguished in that in the former the bank was under no obligation to pay, while in the latter it was. [Id.] The act of 1861 required that the certificate of incorporation should state that ten per cent. must be actually paid in good faith; and the words

¹ Where stock is disposed of by the corporation contrary to this provision, the party receiving the stock is not a stockholder and is not liable for "calls." Kellerman v. Maier, 116 Cal. 416, 48 Pac. 377.

"in good faith" were interpreted by the court to mean "received in good faith by the officers of the corporation, without any intent to return or withdraw the money received, regardless of the intention of the subscriber." [Id.] In another case it was said that this act [1861, p. 607] proceeds on the theory that stock could be issued by the corporation in payment of its debts, but that the unissued stock cannot be pledged to secure its debts. *Brewster v. Hartley*, 37 Cal. 15.

As the constitution substantially re-enacted the foregoing provisions of these acts, it must be presumed that such re-enactment was within reference to the construction already put upon them by the Supreme Court and as an affirmance thereof.

It was doubtless with this in mind that the decisions in *Stein v. Howard*, 65 Cal. 616, 4 Pac. 662, and *Pacific Trust Co. v. Dorsey*, 72 Cal. 55, 12 Pac. 49, were arrived at. The first of these cases decided that an increase of stock, sold at the market value, which was less than its par value, was not a "fictitious" increase within the prohibition of the constitution. [Article XII, section 11.] While the decision relates only to "increase" of stock, it is based on the reasoning that any issue of stock for money paid, labor done, or property actually received, the amount of which money, labor or property is the most the directors honestly believe they can obtain, is not fictitious; and the opinion contains a dictum to that effect.

The second of these cases decides that stock can be issued in exchange for a "promissory note, payable one day after date," because such note is property actually received. [*P. T. Co. v. Dorsey, supra.*] This is really holding that a corporation can issue its stock on credit without violating the constitution, and the case is generally cited for that proposition. See *Underhill v. Santa Barbara Co.*, 93 Cal. 300, 28 Pac. 1049.

The two cases, taken together, announce that a corporation can issue its stock, increase it or sell its bonds for any price it can obtain, whether such price be an unsecured promissory note for any part of the par value, or United States gold coin for the full par value plus a premium, or any intermediate price. Accord, *Kellerman v. Maier*, 116 Cal. 416, 48 Pac. 377.

Morrow, J., in a recent case [*Atlantic Trust Co. v. Woodbridge Co.*, 74 Fed. 842] in the United States Circuit Court, northern district of California, deciding that bonds could not be issued as collateral security for a pre existing debt, declared, "It is well settled that California corporations can sell their stock or issue their bonds at less than par." Distinguishing *Farmers etc. Co. v. San Diego Car Co.*, 45 Fed. 518.

Unless this doctrine has the historical basis attempted to be set forth in these pages, it is difficult to see how it can be reconciled with the constitution, article XII, section 11.

SECTION 98—FICTITIOUS ISSUE A CRIME.

Every director of any stock corporation who concurs in any vote or act of the directors by which it is intended either to receive or discount any note or other evidence of debt, with intent to enable any stockholder to withdraw any part of the money paid in by him, or his stock; or to receive from any other stock corporation in exchange for the shares, notes, bonds, or other evidences of debt of their own corporation, shares of the capital stock of such other corporation, or notes, bonds, or other evidences of debt issued by such other corporation, is guilty of a misdemeanor. Penal Code 560.

SECTION 99—OVERISSUE AND EFFECT.

There is nothing in the California authorities on the questions, what is an over-issue of stock and what is the effect thereof, except a dictum in a very recent decision [*Tulare Sav. Bk. v. Talbot*, 63 Pac. 172 (Cal.1900)], by which it was declared that there was no real overissue in a case where an apparent overissue was created by one incorporator signing the subscription books for an amount greater than the then untaken authorized capital, such signing being intended by the subscriber, and known to the corporation and all the other subscribers, to be as agent for certain of those to whom stock had been already allotted.

SECTION 100—CERTIFICATES OF STOCK.

In treating of the nature of stock [Sec. 79 *supra*] it was found necessary to anticipate somewhat the subject of this section, but the importance of the subject justifies a full treatment here, even at the risk of a partial repetition.

A certificate of stock is evidence that the holder is entitled to an undivided share in the assets of the corporation. [Atkins v. Gamble, 42 Cal. 86.] It is not the only evidence, for title to stock can be proved by entries in the books of the corporation. [C. C. 378.] It is not a negotiable instrument or security in any sense, and can never be a source of title. Atkins v. Gamble, 42 Cal. 86; Hawley v. Brumagim, 33 Cal. 394; Sherwood v. Meadow Valley M. Co., 50 Cal. 412; see Sec. 1087 C. C.

In Sherwood v. Meadow Valley M. Co., 50 Cal. 412, a certificate, endorsed in blank, had been lost and the finder sold it to plaintiff, who was an innocent purchaser for value. Plaintiff claimed to have thus become owner of the stock and demands that the corporation issue to him a new certificate in his own name, offering to surrender the old one. Court gave judgment for the corporation, holding that as the certificate was not a negotiable instrument in any sense, plaintiff acquired nothing but what his vendor, the finder, had. And as the finder had no title, plaintiff acquired none.

As the certificate is merely evidence, a stockholder's rights are not dependent in any

sense on its issuance or non-issuance. One who subscribes for stock and whose subscription is accepted is a stockholder in the fullest sense, with all rights and privileges, regardless of whether a certificate is issued or not. [Cal. Hotel Co. v. Callender, 94 Cal. 120, 29 Pac. 859; San Joaquin Co. v. Beecher, 101 Cal. 70, 35 Pac. 349; Marysville Co. v. Johnson, 93 Cal. 538, 29 Pac. 126; Baines v. Babcock, 95 Cal. 581, 30 Pac. 776; Pac. Fruit Co. v. Coon, 107 Cal. 447, 40 Pac. 542.] One who otherwise acquires title to stock that has been validly issued, and has his name entered on the books is equally a stockholder, regardless of the non-issuance of a certificate. The effect of a transfer of stock by endorsement of certificate and without a transfer on the books will be discussed in Sec. 106, *post*. That effect does not depend on the nature of the certificate.

Mere possession of a certificate, unless made out to the possessor or endorsed in blank or accompanied by a power of attorney, is not even evidence of title. Possession of a certificate made or indorsed to the holder is evidence of title, but not title. If a certificate not made out to the holder were all the title the holder could show, he could not compel a purchaser of stock to take it, nor could he compel a transfer on the books of the corporation. Nicholls v. Reid, 109 Cal. 630, 42 Pac. 298, citing Borland v. Nevada Bank, 99 Cal. at 94, 33 Pac. 737; Tafft v. Presidio Co.,

84 Cal. 131, 24 Pac. 436; *Quay v. Presidio Co.*, 82 Cal. 1, 22 Pac. 925.

Possession of the certificate is not possession of the stock, even for the purpose of asserting a lien. It has been held that where no certificate had ever been issued and only part of the price had been paid, the corporation had no lien dependent on possession, (*i. e.* lien proper), because possession of the stock was in the stockholder. *Lankershim Co. v. Herberger*, 82 Cal. 600, 23 Pac. 134.

Just as the issuance of a certificate is in no sense a necessary preliminary to the ownership of stock, so proof of the cancellation of the certificate is not proof that the holder ceased to be owner of the stock. *Pac. Fruit Co. v. Coon*, 107 Cal. 447, 40 Pac. 542.

SECTION 101—RIGHT TO DEMAND CERTIFICATES.

All corporations for profit must issue certificates for stock when fully paid up, signed by the president and secretary, and may provide in their by-laws for issuing certificates prior to full payment, under such restrictions and for such purposes as their by-laws may provide, but any certificate issued prior to full payment must show on its face what amount has been paid thereon. C. C. 323.

A refusal to issue certificates gives a right of action for damages against the corporation, or an action for specific performance [*Barstow*

v. Savage M. Co., 64 Cal. 388, 1 Pac. 349], but not an action for conversion. [*Spurgeon v. Santa Ana Co.*, 120 Cal. 71, 52 Pac. 140; *Ralston v. Bank of California*, 112 Cal. 208, 44 Pac. 470.] It is no defense to a refusal to issue the certificate that the corporation has a lien on the stock. The certificate being taken by any transferee subject to the same liabilities under which his transferor held, the corporation cannot be prejudiced by a transfer, for the stock remains after transfer, still subject to the lien. *Craig v. Hesperia etc. Co.*, 113 Cal. 7, 45 Pac. 10; see also Chap. XII, *post*.

The holder of the full equitable title to stock, whether acquired by transfer or operation of law, is entitled to have the stock transferred into his name on the books and to demand a certificate. *Ashton v. Heggerty*, 130 Cal. 516, 62 Pac. 934. This case refers to a bare or inactive trust.

Water companies are entitled to provide by by-law [C. C. 324] that stock therein shall be appurtenant to land and transferred only with the land, if such land is designated in the certificate. It has been held that this section does not mean that a certificate will not be issued until the subscriber has agreed it will not be transferrable except with the land, but that the corporation will not deliver water except to the land so designated. [*Spurgeon v. Santa Ana Co.*, 120 Cal. 71, 52 Pac. 140.] A delinquent sale of the stock to

the corporation would therefore sever the connection between the land and the stock, and until ascribed to new land the stock would be free stock and the owner entitled to certificates transferrable in due form. *Id.*

CHAPTER XII.

TRANSFER OF SHARES.

SEC. 102.—NATURE AND EXTENT OF RIGHT TO TRANSFER.

SEC. 103.—PARTICULAR CORPORATIONS AND ABNORMAL HOLDERS.

SEC. 104.—MARGINS.

SEC. 105.—TRANSFER BY DELIVERY OF CERTIFICATE.

SEC. 106.—EFFECT OF UNREGISTERED TRANSFER.

SEC. 107.—SAME.

SEC. 108.—OTHER MODES OF TRANSFER.

SEC. 109.—LIABILITY OF CORPORATION FOR WRONGFUL REFUSAL TO TRANSFER.

SEC. 110.—RIGHTS AND LIABILITIES OF TRANSFEREE—REGISTERED.

SEC. 111.—SAME—UNREGISTERED.

SECTION 102—NATURE AND EXTENT OF RIGHT TO TRANSFER.

Shares of stock are personal property and, except as provided otherwise by law, are transferable in a like mode as other intangible personalty.¹ Contracts relating to the transfer of stock must be made and carried into execution according to the law of the state where the stock has its situs, *i. e.*, home state of corporation, irrespective of where the contract was actually entered into.² Contracts for the

1. C. C. 324; *Tregear v. Etiwanda W. Co.*, 76 Cal. 537, 18 Pac. 658.

2. *Dow v. Gould & Curry, etc. Co.*, 31 Cal. 630.

transfer of intangible property are not construed in any special manner because that property happens to be shares of stock.¹ The code provision [C. C. 3440] making void certain transfers of property without transfer of possession protects only creditors and third parties, and does not invalidate, as between the parties, transfers of stock made without change of possession.² In an early case,³ it was decided that stock could be validly mortgaged, pursuant to then existing chattel-mortgage act;⁴ and if such mortgage were recorded, it was valid as against all the world, irrespective of whether the transfer was entered on the corporation's books, as was required by the act relating to pledges of stock by delivery of the certificates.⁵ This is not law to-day, for the code now provides that only such personalty as is specially mentioned therein [C. C. 2955] can be mortgaged, and shares of stock are not so mentioned.

The corporation has no interest in the individual ownership of its shares and is not a proper party to an action between two claimants to the ownership thereof. [Behlow v. Fischer, 102 Cal. 208, 36 Pac. 509.] Subject only to the qualification that after the corporation is in an insolvent condition a shareholder cannot by transfer to an irresponsible party relieve himself from liability to creditors

1. Kilbridge v. Moss, 113 Cal. 432, 45 Pac. 812.

2. Tregear v. Etiwanda W. Co., 76 Cal. 537, 18 Pac. 658.

3. Ede v. Johnson, 15 Cal. 53.

4. Stat. 1857, p. 347, Secs. 1, 2.

5. Stat. 1853, p. 273.

[see Sec. 172, *post*], there is no restriction on the power of a stockholder to select any transferee he desires. *Nat. etc. Co. v. Story etc. Co.*, 111 Cal. 531, 44 Pac. 157; see also *Moore v. Boyd*, 74 Cal. 167, 15 Pac. 670.

"When the shares of stock in a corporation are owned by parties residing out of the state, the president, secretary or directors of the corporation, before entering any transfer of the shares on its books, or issuing a certificate therefor to the transferee, may require from the attorney or agent of the non-resident owner, or from the person claiming under the transfer, an affidavit or other evidence that the non-resident owner was alive at the date of the transfer, and if such affidavit or other satisfactory evidence be not furnished, may require from the attorney, agent or claimant a bond of indemnity, with two sureties satisfactory to the officers of the corporation, or, if not so satisfactory, then one approved by a judge of the Superior Court of the county in which the principal office of the corporation is situated, conditioned to protect the corporation against any liability to the legal representatives of the owner of the shares in case of his or her death before the transfer; and if such affidavit or other evidence or bond be not furnished when required, as herein provided, neither the corporation nor any officer thereof shall be liable for refusing to enter the transfer on the books of the corporation." C. C. 326.

Stock is devisable and inheritable, and

passes, by operation of law, like other personalty incapable of manual delivery. *Nicholls v. Reid*, 109 Cal. 630, 42 Pac. 298.

At the dissolution, by death, of a partnership, title to stock that was partnership assets, but stood in the name of the deceased partner, devolves on the surviving partner, and not on the representatives of the deceased [*People v. Hill*, 16 Cal. 113]; similarly, on the death of an individual holder, title to stock held by him is in his administrators or executors and not in the heirs. *Nicholls v. Reid*, 109 Cal. 630, 42 Pac. 298.

One who confers on another all the indicia of title is estopped as against an innocent transferee or pledgee relying on such indicia¹ to deny the title apparently so held.² Either allowing the stock to stand in the name of another,³ or giving that other possession of the certificate indorsed in blank or accompanied by a blank power of attorney,⁴ confers full indicia of title and creates this estoppel.⁵ Nor is the addition of the word "trustee" after the name in the certificate or on the books constructive notice of the equities of the secret owner. It raises no presumption that the trustee has not power to sell or hypothecate in the usual order of business. *Brewster v. Sime*, 42 Cal. 139.

1. *Barstow v. Savage M. Co.*, 64 Cal. 388, 1 Pac. 349.

2. *Thompson v. Toland*, 48 Cal. 99.

3. *Thompson v. Toland*, 48 Cal. 99; *Brewster v. Sime*, 42 Cal. 139.

4. *Krouse v. Woodward*, 110 Cal. 638, 42 Pac. 1085.

5. *Thompson v. Toland*, 48 Cal. 99; *Brewster v. Sime*, 42 Cal. 139; *Krouse v. Woodward*, 110 Cal. 638, 42 Pac. 1085.

SECTION 103—PARTICULAR CORPORATIONS— ABNORMAL HOLDERS.

Water companies organized to furnish water for irrigation purposes or for domestic use are allowed by by-law to provide that its shares of stock shall be appurtenant to certain lands when the land is designated in the certificates, and that water can only be furnished to stockholders and for the lands designated. C. C. 324.

When such a by-law is adopted and certificates issued as it provides, the shares cannot be transferred except with the land. [Spurgeon v. Santa Ana Co., 120 Cal. 71, 52 Pac. 140.] For effect of a delinquent sale of such stock, see section 101, *supra*.

Shares of stock standing on the books of the corporation in the name of a married woman may be transferred by her, her agent or attorney, without the signature of her husband, and in the same manner as if such married woman were a feme sole. C. C. 325. (For non-resident transferee see preceding section.)

SECTION 104—MARGINS.

The state constitution [Art. IV, Sec. 26] authorizes the legislature to pass laws to regulate or prohibit the buying and selling of the shares of the capital stock of corporations in any stock board, stock exchange or stock market under the control of any association. The same section declares that all contracts for the sale of shares of stock of any

corporation or association on margin or to be delivered at a future day, shall be void, and any money paid on such contracts may be recovered by the party paying it by suit in any court of competent jurisdiction.

It has never been questioned but that this last provision is self-executing; and it is held to be a regulation under the police power not in conflict with fourteenth amendment of United States constitution; not penal, but remedial, and not outlawed in one year. *Parker v. Otis*, 130 Cal. 322, 62 Pac. 571.

"Margin" covers all transactions called by that name according to the usages of brokers,¹ and whether stock is bought on margin or not, is a question of fact.² The purchaser recovers the whole amount he has paid without interest and the broker cannot set-off any assessment he has paid. *Wetmore v. Barrett*, 103 Cal. 246, 37 Pac. 140; *Kullman v. Simmens*, 104 Cal. 595, 38 Pac. 362.

SECTION 105—TRANSFER, BY DELIVERY OF CERTIFICATE.

In addition to the methods by which stock can be transferred because of its nature as property, the law has provided [C. C. 324] that stock may be transferred by indorsement by the signature of the proprietor, his agent, attorney or legal representative, and the

1. *Cashman v. Root*, 89 Cal. 373, 26 Pac. 883; *Wetmore v. Barrett*, 103 Cal. 246, 37 Pac. 140; *Sheehy v. Shinn*, 103 Cal. 325, 37 Pac. 393; *Baldwin v. Zadig*, 104 Cal. 594, 38 Pac. 363, 722; *Kullman v. Simmens*, 104 Cal. 595, 38 Pac. 362; *Parker v. Otis*, 130 Cal. 322, 62 Pac. 571.

2. *Baldwin v. Zadig*, 104 Cal. 594, 38 Pac. 363, 722.

delivery of the certificate; but *such*¹ transfer is not valid, except as to the parties thereto, until the same is so entered upon the books of the corporation as to show the names of the parties by whom and to whom transferred, the number or designation of the shares, and the date of the transfer.

This convenient method of alienation is one of the greatest incentives to incorporation, and is almost the sole method of transfer used by the commercial world. It has been in this state, as in others, the source of much litigation, so much so in fact, that the rule, as we now have it, bears little resemblance to the wording of the law.

SECTION 106—EFFECT OF UNREGISTERED TRANSFER.

The statute provides [C. C. 324] that a transfer of stock effectuated by indorsement and delivery of the certificate is not valid, except between the parties thereto. It is well settled today that this means that such a transfer is valid as against all the world, except an innocent purchaser for value, or a pledgee or attaching creditor, without notice. [Graves v. Mono L. Co., 81 Cal. 303, 22 Pac. 665; Farmers' etc. Bank, v. Wilson, 58 Cal. 600]. An adequate comprehension of this interpretation can only be had by an historical survey of its origin and establishment, and as an introduction to such

¹ The italics are ours; see Sec. 108, *post*.

survey it is pertinent to remark that the general corporation laws¹ in force prior to the codes contained provisions as to the effect of unregistered transfers similar to those now in the Civil Code. *Winter v. Belmont M. Co.*, 53 Cal. 428.

The Supreme Court was first called upon to interpret the language of the legislature in *Weston v. Bear River Mining Co.*, 5 Cal. 186, where the question was whether the rights of an attaching creditor were defeated by a prior indorsement and delivery of the certificates by way of pledge, without a transfer on the books of the corporation. The court held that they were not, declaring "that by every rule of construction, no transfer is good against third parties unless made on the books of the corporation." Nothing is said as to whether or not the third party had notice of the unrecorded pledge, but when the same case came up again after a new trial [6 Cal. 425] wherein it had been found as a fact that the plaintiff (purchaser at sheriff's sale) had full notice of the pledge when he purchased, the court reversed its first holding. The second position of the court therefore was that such unrecorded transfers were good as against third parties, who purchased at sheriff's sale with notice thereof, but not good against such parties if they did not know of the same at the time of their purchase; and all this, irrespective of the notice or want of notice of the attaching

1. Stat. 1850, p. 347, Secs. 12, 144; Stat. 1853, p. 87, Sec. 9. Section 9, act of 1853, was not intended to change the act of 1850. *Weston v. Bear River Mining Co.*, 6 Cal. 425.

creditor himself. The next case is *Strout v. Natoma W. & M. Co.*, 9 Cal. 78, which declares (dictum) that an unrecorded pledge is void as to third parties. It is impossible to tell with which of the earlier cases this one agrees, but the reasoning in all three is tossed overboard in *Naglee v. Pacific Wharf Co.*, 20 Cal. 529, which overrules the second case, reads into the first a meaning it was not intended to have, declares that the third disagrees with the second, and approves of the new meaning given to the first. The Naglee case decides that "assignments by mere delivery of the certificates coupled with a written power of attorney or with an indorsement, without a transfer on the books of the corporation will not defeat the rights of a subsequent attaching creditor of the assignor, if such creditor have no notice of the prior unrecorded assignment. That the purchaser at the attachment sale has notice or not is immaterial. The attaching creditor having no notice at time of levy, his rights are then complete and he cannot be defeated by giving him notice subsequently, or giving notice to bidders at the sale."¹

It will be noted that it is attachment creditors who, at the time of levy, have no notice of any prior assignment, that are protected by this decision.

¹ *Farmers' etc. Bank v. Wilson*, 58 Cal. 600, contains a dictum contra; but that dictum has not served as a precedent for any subsequent decision, and it is submitted that it is not law.

SECTION 107—SAME.

Then came *People v. Elmore* (1868), 35 Cal. 653; *Parrott v. Byers* (1871), 40 Cal. 614; and *Thompson v. Toland* (1874), 48 Cal. 99, all based on the authority of the *Naglee* case and treating it as *stare decisis*. *Winter v. Belmont Mining Co.*, 53 Cal. 428, marks an attempted revolt from the reasoning of these cases. The case decided that an innocent purchaser of the certificates from a thief, who had been once the owner and had stolen them from his transferee got a better title than the transferee because the latter had failed to have his purchase registered on the books of the corporation. The opinion declared that the statutory provision imparted to certificates the character, as between third parties, of negotiable instruments, so that an innocent purchaser could get a greater title than his grantor had. The *Naglee* case was accepted as decisive only so far as the precise point it decided, *i. e.* as to attaching creditors,¹ but the reasoning of it was disproved and the intention expressed not to extend its field of operation. But *Winter v. Belmont Mining Co.* was overruled in terms by *Barstow v. Savage Mining Co.*, 64 Cal. 388, 1 Pac. 349, decided five years later, which case announces that certificates are in no sense negotiable instruments, that a purchaser from a thief gets no title other than that which a thief has, which is none. Such

1. Citing to show *stare decisis* *People v. Elmore*, 35 Cal. 653; *Brewster v. Sime*, 42 Cal. 139; *Thompson v. Toland*, 48 Cal. at 112; *Sherwood v. Meadow Valley M. Co.*, 50 Cal. 412.

a purchaser is therefore not a purchaser of the stock and as against him a prior unrecorded transfer is valid. This decision carries the Naglee case (*supra*) to its logical conclusion. It means that an unrecorded transfer of the certificates, leaves the legal title in the transferor, but held in trust for the transferee; that a subsequent sale or pledge by the transferor is a breach of trust, so that a bona fide purchaser for value, from him takes title free from the trust, while any other transferee takes title subject to the trust. A thief never gets legal title at all and so his transferee does not.

Thus was settled the rights and priorities of the different parties to an unregistered transfer as between themselves and third persons. Subsequent cases¹ have but confirmed the Barstow case, *supra*.

Incidental to this settlement is the settlement of the question who, after such a transfer is, as regards the corporation, the stockholder? In the same year as the Barstow decision, *People v. Robinson*, 64 Cal. 373, 1 Pac. 156 was decided, wherein the court, reasoning solely on the law of trusts and without citing a single California case, reached the conclusion that the transferor was a trustee, holding the bare legal title, and therefore was the stockholder with the attendant right to vote,

1. *Tregear v. Etiwanda W. Co.*, 76 Cal. 537, 18 Pac. 658; *Graves v. Mono Lake Co.*, 81 Cal. 303, 22 Pac. 665; *Krouse v. Woodward*, 110 Cal. 638, 42 Pac. 1085, *McFall v. Buckeye etc. Asso.*, 122 Cal. 468, 55 Pac. 253; *Calkins v. Equitable etc. Asso.*, 126 Cal. 531, 59 Pac. 30; *Lady Wash. etc. Co. v. Wood*, 113 Cal. at 490, 45 Pac. 809.

and this case is also a leading one. *Gay v. Dare*, 103 Cal. 454, 37 Pac. 466; *Spreckels v. Nevada Bank*, 113 Cal. 277, 45 Pac. 329.

Nothing is intended to be stated in this case as to the rights of the corporation against the transferor or transferee [Sec. 111, *post*], nor is it intended to shake the authority of *Parrott v. Byers*, 40 Cal. 614, which holds that such a transferee can sue as a stockholder on behalf of the corporation. On this question see chapter XV, *post*.

SECTION 108—OTHER MODE OF TRANSFER.

In section 105 in quoting the section of the Civil Code [Sec. 324] which provides that such [unregistered] transfers are not valid except between the parties, we italicised the word "such." This was done for two reasons. First, to show that the code recognized that there were other modes of transfer, and second, to show that lack of registration only invalidates transfers that are made by indorsement and delivery of the certificate.

A corporation has power to provide by by-law for the transfer of its stock in any way not inconsistent with the general law. [Sec. 354 Sub. 6, C. C.] A by-law providing that all transfers shall be made subject to any debts or equities existing in favor of the corporation is an invalid by-law, inconsistent with the rule that the innocent transferee of the certificate from the true owner takes it

free of all equities existing against that owner¹. It is an attempt to create a secret lien, good as against all parties, having notice or not. But a by-law providing in addition, that the certificate shall read "not transferrable on the books until all debts to the corporation have been paid" is a valid by-law, as it gives notice to all transferees.²

A pledge of stock, without delivery of certificates or authorization to register on the books, is void as to all creditors,³ with or without notice, but it would be enforceable between the parties.

Many if not most of the California corporations have found it convenient to provide by by-law that stock can only be transferred on the books of the corporation, and do so provide. Under such a by-law that mode is exclusive. C. C. Sec. 354, Sub. 6.⁴

SECTION 109—LIABILITY OF CORPORATION FOR WRONGFUL REFUSAL TO TRANSFER.

No action ever lies against a corporation to compel it to issue "shares" or for damages for a refusal so to do. It is a confusion of ideas to speak of issuing "shares." Shares are an undivided interest in the corporation's cap-

1. *Anglo-Am. Bank v. Granger Bank*, 63 Cal. 359, a decision in 2 Sawyer. 133 contra, cannot be supported to-day. Compare *People v. Crockett*, 9 Cal. 112, decided under Stat. 1854, p. 84.

2. *Ralston v. Bank of Cal.*, 112 Cal. 208, 44 Pac. 476; following *Jennings v. Bank of Cal.*, 79 Cal. 323, 21 Pac. 852.

3. *McFall v. Buckeye etc. Asso.*, 122 Cal. 468, 55 Pac. 253; *Spreckels v. Nevada Bank*, 113 Cal. 272, 45 Pac. 329, see also *Jennings v. Bank of Cal.* 79 Cal. 323, 21 Pac. 852.

4. See cases under note 2, *supra*.

ital stock, they can be sold but not "issued." [See Sec. 80 *supra*.] For a wrongful refusal to issue certificates, or to recognize the shareholder as such on the books of the corporation, an action lies. The right of action against the corporation for a wrongful refusal to issue certificates has already been considered [Sec. 101 *supra*], the discussion in this section is as to the liability of the corporation for wrongful refusal to transfer on the books.

The law provides that all stock may be transferred by indorsement and delivery of the certificates, which transfer only becomes complete when registered on the books of the corporation [C. C. 324]; that all corporations for profit must keep "stock transfer" books for this purpose [C. C. 378] and an office where such transfers shall be made. [Const. Art. XII, Sec. 14.] It is therefore the duty of the corporation to each transferee of a share of stock, applying for that purpose, who presents a certificate properly endorsed, or if no certificates have been issued, upon demand of the transferee, to cause the transfer to be entered on the books. *Quay v. Presidio Co.*, 82 Cal. 1, 22 Pac. 925; *Tafft v. Presidio Co.*, 84 Cal. 131, 24 Pac. 436; *Ralston v. Bank of Cal.*, 112 Cal. 208, 44 Pac. 476; *People v. Robinson*, 64 Cal. 373, 1 Pac. 156; *Pendergast v. Bank of Stockton*, 2 Sawyer 108.

For a wrongful refusal,¹ the transferee has either of two remedies—an action in conver-

¹ Presentment for transfer and refusal of corporation to transfer must be alleged in the complaint. *Edwards v. Sonoma etc. Bank*, 59 Cal. 136.

sion for damages¹, or a suit in equity for specific performance², but not both. [*Herbert Craft etc. Bank v. Bank of Oakland*, 65 Pac. 143 (Cal., May, 1901).] The action in conversion is an election to treat title as having passed from the plaintiff to the corporation; and the measure of damages is the market value of the stock on the date of conversion, with interest, [*Ralston v. Bank of Cal.*, 112 Cal. 208, 44 Pac. 476, C. C. 3336]; or where the action has been prosecuted with reasonable diligence, the highest market value of the property at any time between the conversion and the verdict, without interest, at the option of the injured party. C. C. 3336; *Fromm v. Sierra Nevada etc. Co.*, 61 Cal. 629.

Mandamus against the president and secretary of the corporation to compel a transfer on the books will not lie. *Kimball v. Union W. Co.*, 44 Cal. 173; contra, *People v. Crockett*, 9 Cal. 112, decided under Stat. 1854, p. 84.

It is equally actionable for a corporation to wrongfully remove a stockholder's name and to substitute that of another. Though such an act does not divest the stockholder of his title, it reduces the selling value of his shares. [See *Stewart v. Mahony M. Co.*, 54 Cal. 149.] The law gives him an election of remedies: Conversion for the market value of the stock, with interest, which is an election to transfer

1. *Kimball v. Union W. Co.*, 44 Cal. 173, 61 Cal. 173; *Ralston v. Bank of Cal.* 112 Cal. 208, 44 Pac. 476; *Quay v. Presidio Co.*, 82 Cal. 1, 22 Pac. 925. The complaint must allege damages as a consequence of such refusal. *Edwards v. Sonoma etc. Bank*, 59 Cal. 136.

2. *Ralston v. Bank of Cal.*, 112 Cal. 208, 44 Pac. 476.

title to the corporation and its transferee, or a simple action for whatever damages have been sustained, which is an election to retain title. *Tafft v. Presidio Co.*, 84 Cal. 131, 24 Pac. 463.

It is the duty of the corporation to each stockholder to transfer only on a proper endorsement or authorization, and if the corporation is deceived by a forgery or by the applicant's want of authority, the loss, if any, falls on the corporation. For such wrongful transfer it is liable to the stockholder in either of the actions just described. *Quay v. Presidio Co.*, 82 Cal. 1, 22 Pac. 925; *Tafft v. Presidio Co.*, 84 Cal. 131, 24 Pac. 436.

A pledgee has no right to have the stock transferred into his name on the books without an express contract therefor by the pledgor. All that the code [C. C. 324] gives him the right to demand is that the fact of the pledge be entered on the books, which entry makes the pledge valid against all third parties. *Spreckels v. Nev. Bank*, 113 Cal. 272, 45 Pac. 329; *Herbert Craft etc. Bank v. Bank of Orland*, 65 Pac. 143 (Cal., May, 1901).

SECTION 110—RIGHTS AND LIABILITIES OF TRANSFEREES—REGISTERED.

When stock has been regularly transferred on the books of the corporation there is no longer any privity between the transferor and the corporation. [*Edwards v. Beugnot*, 7 Cal. 162; *Nat. etc. Co., v. Story etc. Co.*, 111 Cal. 531, 44 Pac. 157.] Whether the transfer

as between the parties was a sale or a pledge is immaterial in this connection; if a pledge, the pledgor has only an equity enforceable against the pledgee or his assigns. [*Id.* also *Brewster v. Hartley*, 37 Cal. 15.] A transferee of stock takes it and holds it thereafter subject to all the conditions and obligations his transferor was liable to. [*Visalia etc. R. R. Co. v. Hyde*, 110 Cal. 632, 43 Pac. 10.] A transfer on the books and the issuance of new certificates would not affect the right of the corporation to sell the stock for assessments already levied or delinquent, and such a levy or delinquency would therefore be no valid defense to a refusal to make the transfer. *Craig v. Hesperia etc. Co.*, 113 Cal. 7, 45 Pac. 10; *Hawley v. Brumagim*, 33 Cal. 394; *Atkins v. Gamble*, 42 Cal. at 99.

It is for the same reason that no lien of the corporation on the stock is any defense to a refusal to transfer. See Sec. 101, *supra*; see also *People v. Crockett*, 9 Cal. 112.

SECTION 111—SAME—UNREGISTERED.

An unregistered transfer does not make the transferee a stockholder. [Sec. 107 *supra*.] Until transfer, or after demand and refusal of the corporation to transfer [*People v. Robinson*, 64 Cal. 373, 1 Pac. 156], the transferor remains personally liable to the corporation for all calls or assessments, [*Visalia etc. R. R. Co. v. Hyde*, 110 Cal. 632, 43 Pac. 10; *Gay v. Dare*, 103 Cal. 454, 37 Pac. 466.] The corporation can only look to its books to see who are

shareholders. If, however, assessments are levied or calls are made between the time of transfer and of registration, the transferor, after paying the same, has recourse to his transferee. As between the parties, the latter is the true owner, and the one on whom the burden rests. *Gay v. Dare*, 103 Cal. 454, 37 Pac. 466.

CHAPTER XIII.

ASSESSMENTS AND DIVIDENDS.

SEC. 112.—ASSESSMENTS—DISTINGUISHED FROM CALLS.

SEC. 113.—RIGHT TO LEVY ASSESSMENTS.

SEC. 114.—METHOD AND PROCEDURE.

SEC. 115.—DELINQUENT SALE.

SEC. 116.—SAME.

SEC. 117.—SAME.

SEC. 118.—COLLECTION BY ACTION AT LAW.

SEC. 119.—DIVIDENDS—FROM WHAT MADE.

SEC. 120.—NATURE OF DIVIDENDS.

SECTION 112—ASSESSMENTS—DISTINGUISHED FROM CALLS.

The power of the directors of a corporation to levy and collect assessments is wholly statutory [Santa Cruz etc. Co. v. Spreckels, 65 Cal 193, 3 Pac. 661, 802], but the power to make calls, as distinguished from assessments, exists in corporations at common law. The unpaid part of the purchase price of stock is a simple contract debt owing to the corporation. Arroyo Co. v. Superior Court, 92 Cal. 47, 28 Pac. 54; Santa Cruz etc. Co. v. Spreckels, *supra*.

If demands by the corporation for the unpaid purchase price of its stock were always designated as "calls" and the word "assessment" only used to cover demands by the corporation on its stockholders for a fund with which to pay expenses, conduct business or pay debts, much confusion would be obvi-

ated. Unfortunately the statute [C. C. 331] giving corporations the power to raise such a fund and prescribing the conditions and mode of levy, provides a similar demand and mode of collection for the unpaid part of the purchase price of stock and terms both demands "assessments." C. C. 332.

That this nomenclature does not destroy the fundamental distinction between calls and assessments is clear. Assessments can only be levied and collected after one-fourth of the capital stock has been subscribed,¹ there is no such condition precedent to the collection of a call.² It is always a defense to an assessment, that the corporation has no debts, liabilities or obligations;³ such a defense is of no avail in an action to collect a call.⁴ Assessments can only be collected in the mode prescribed by statute.⁵ In some cases a simple contract action lies to collect a call.⁶ Again, when a corporation contracts to sell its stock for less than par, and describes the stock as "fully paid and unassessable," such description is taken to mean that there is no liability for calls, but will not be construed to mean that assessments to pay debts or expenses cannot be levied. *Green v. Abietine Co.*, 96 Cal. 322, 31 Pac. 100.

1. C. C. 331; *San Bernardino Co. v. Merrill*, 108 Cal. 490, 41 Pac. 487.

2. *Ventura R. R. Co. v. Hartman*, 116 Cal. 260, 48 Pac. 65.

3. C. C. 331; *Sullivan v. Trunfo M. etc. Co.*, 39 Cal. 459.

4. See Chap. XI, *supra*.

5. *Santa Cruz etc. Co. v. Spreckels*, 65 Cal. 193, 3 Pac. 661, 802.

6. See Chap. XI, *supra*, for the statutory method of collecting calls where no absolute contract to pay is made. See also C. C. 332, sub. 1.

SECTION 113—RIGHT TO LEVY ASSESSMENTS.

The directors¹ of any corporation formed or existing under the laws of this state, after one-fourth of the capital stock has been subscribed, may, for the purpose of paying expenses, conducting business, or paying debts, levy and collect assessments upon the subscribed capital stock. [C. C. 331.] This power to levy is subject to two limitations: (a) that no one assessment must exceed ten per cent. of the amount of the capital stock named in the articles of incorporation;² (b) that no assessment must be levied while any portion of a previous one remains unpaid. [C. C. 333.] To these limitations there are again exceptions; railroad companies and fire and marine insurance companies are excepted from both limitations, while the second one does not apply if the corporation has already exercised its power to collect the previous assessment, or such assessment has been enjoined. C. C. 333.

That one-fourth the capital stock has been subscribed is a condition precedent to the right of the directors to levy assessments,³ and except to pay debts or expenses, or conduct business,

¹ The directors of a state bank, after the bank is insolvent and after the Bank Commissioners have taken charge, but before an adjudication of insolvency, have no power to levy assessments, and an assessment then levied is void. *Bank of Nat. City v. Johnson*, 65 Pac. 383 (Cal., June, 1901).

² C. C. 332. It is in making an exception to this limitation that the legislature provided that *calls* could be for the full amount unpaid.

³ *San Bernardino Co. v. Merrill*, 108 Cal. 490, 41 Pac. 487

no assessment can ever be levied.¹ "Debts" include all liabilities of a corporation.² If the liability arises because of benefits received under an ultra vires contract, an assessment is leviable to pay it. *Taylor v. North Star etc. Co.*, 79 Cal. 285, 21 Pac. 753; *Sullivan v. Triunfo etc. Co.*, 29 Cal. 586.

Santa Cruz R. R. Co. v. Spreckels, 65 Cal. 193, 3 Pac. 661, 802, decided that assessments would lie under these sections of the code [C. C. 331-3] on stock, the purchase price or par value of which had been fully paid. The decision was by a divided court [4 to 3] but has been accepted as law by the subsequent cases. *Green v. Abietine Med. Co.*, 96 Cal. 322, 31 Pac. 100.

The question who are liable for assessments, as between parties to a transfer of stock, has already been discussed. Chapter XII, *supra*; see also *Gay v. Dare*, 103 Cal. 454, 37 Pac. 466.

SECTION 114—METHOD AND PROCEDURE.

Section 331 of the Civil Code giving to the directors the power to levy assessments declares that such power can only be exercised as therein provided, and sets out in detail the acts necessary to be performed in order to create a valid assessment and collect the same. Such mode is therefore exclusive.³ [*Pacific Fruit Co. v. Coon*, 107 Cal. 447, 40

1. *Sullivan v. Triunfo etc. Co.*, 29 Cal. 586; *Sullivan v. Triunfo etc. Co.*, 39 Cal. 459; *Taylor v. North Star etc. Co.*, 79 Cal. 285, 21 Pac. 754. *Younglove v. Steinman*, 80 Cal. 375, 22 Pac. 189.

2. *Sullivan v. Triunfo Co.*, 39 Cal. 459.

3. An assessment upon the shares of certain stockholders, and not upon all, is void. *Kohler v. Agassiz*, 99 Cal. 15, 33 Pac. 741; *Herbert Craft Co. Bank v. Bank of Orland*, 65 Pac. 143 (Cal., May, 1901).

Pac. 542. See Chap. VII, *supra*.] It is as follows: Every order levying an assessment must specify the amount thereof, when, to whom, and where payable; fix a day, subsequent to the full term of publication of the assessment notice, on which the unpaid assessments shall be delinquent, not less than thirty nor more than sixty days from the time of making the order levying the assessment, and a day for the sale of delinquent stock, not less than fifteen nor more than sixty from the day the stock is declared delinquent. C.C. 334.

Upon the making of the order, the secretary shall cause to be published a notice thereof; in the following form:

(Name of corporation in full. Location of principal place of business). Notice is hereby given that at a meeting of the directors, held on the (date), an assessment of (amount) per share was levied upon the capital stock of the corporation payable (when, to whom, and where). Any stock upon which this assessment shall remain unpaid on the (day fixed) will be delinquent and advertised for sale at public auction, and, unless payment is made before, will be sold on the (day appointed) to pay the delinquent assessment, together with cost of advertising and expenses of sale. C. C. 335.

The notice must be personally served upon each stockholder, or, in lieu of personal service, must be sent through the mail, addressed to each stockholder at his place of residence, if known, and if not known, at the place

where the place of the principal office of the corporation is situated, and be published once a week, for four successive weeks, in some newspaper of general circulation and devoted to the publication of general news, published at the place designated in the articles of incorporation as the principal place of business, and also in some newspaper published in the county in which the works of the corporation are situated, if a paper be published therein. If the works of the corporation are not within a state or territory of the United States, publication in a newspaper of the place where they are situated is not necessary. If there be no newspaper published at the place designated as the principal place of business of the corporation, then the publication must be made in some other newspaper of the county, if there be one, and if there be none, then in a newspaper published in an adjoining county. C. C. 336.

SECTION 115—DELINQUENT SALE.

If any portion of the assessment mentioned in the notice remains unpaid on the day specified therein for declaring the stock delinquent, the secretary must, unless otherwise ordered by the board of directors, cause to be published in the same papers in which the notice of assessment shall have been published, a notice substantially in the following form:

(Name in full. Location of principal place of business). NOTICE. There is delinquent upon the following described shares, on

account of assessment levied on the (date), (and assessments levied previous thereto, if any) the several amounts set opposite the names of the respective shareholders, as follows: (Names, number of certificate, number of shares, amount).

And in accordance with law (and an order of the board of directors made on the (date), if any such order shall have been made), so many shares of each parcel of such stock as may be necessary, will be sold, at the (particular place), on the (date) at (the hour) of such day, to pay delinquent assessments thereon together with costs of advertising and expenses of the sale.

(Name of secretary with location of office).
C. C. 337.

The notice must specify every certificate of stock, the number of shares it represents, and the amount due thereon, except where certificates may not have been issued to parties entitled thereto, in which case the number of shares and amounts due thereon, together with the fact that the certificates for such shares have not been issued, must be stated.
C. C. 338.

The notice, when published in a daily paper, must be published for ten days, exclusive of Sundays and holidays, previous to the day of sale. When published in a weekly paper, it must be published in each issue for two weeks previous to the day of sale. The first publication of all delinquent sales must

be at least fifteen days prior to the day of sale. C. C. 339.

By the publication of the notice the corporation acquires jurisdiction to sell and convey a perfect title to all of the stock described in the notice of sale upon which any portion of the assessment or costs of advertising remains unpaid at the hour appointed for the sale, but must sell no more of such stock than is necessary to pay the assessments due and costs of sale. C. C. 340.

SECTION 116—SAME.

On the day at the place and at the time appointed in the notice of sale, the secretary must, unless otherwise ordered by the board of directors, sell or cause to be sold at public auction, to the highest bidder for cash, so many shares of each parcel of the described stock as may be necessary to pay the assessment and charges thereon, according to the terms of sale; if payment is made before the time fixed for sale, the party paying is only required to pay the actual cost of advertising, in addition to the assessment. C. C. 341.

The person offering at such sale to pay the assessment and costs for the smallest number of shares or fraction of a share is the highest bidder, and the stock purchased must be transferred to him on the stock books of the corporation, on payment of the assessment and costs. C. C. 342.

The dates fixed in any notice of assessment or notice of delinquent sale may be extended

from time to time for not more than thirty days, by order of the directors, entered on the records of the corporation; but no order extending the time for the performance of any act specified in any notice is effectual unless notice of such extension or postponement is appended to and published with the notice to which the order relates. C. C. 345.

If, at the sale of stock, no bidder offers the amount of the assessments and costs and charges due, the same may be bid in and purchased by the corporation, through the secretary, president, or any director thereof, at the amount of the assessments, costs and charges due; and such amount must be credited as paid in full on the books of the corporation, and entry of the transfer of the stock to the corporation must be made on the books thereof. While the stock remains the property of the corporation it is held subject to the control of the holders of a majority of the remaining shares [C. C. 344], and the corporation has no interest therein which it can dispose of voluntarily or involuntarily. [Robinson v. Gold & Silver M. Co., 72 Cal. 32, 13 Pac. 65.] It is not assessable, nor must any dividends be declared thereon, but all assessments and dividends must be apportioned upon the stock held by the stockholders of the corporation. C. C. 343.

The publication of the required notice may be proved by the affidavit of the printer, foreman or principal clerk of the newspaper in which the same was published; and the affi-

davit of the secretary or auctioneer is prima facie evidence of the time and place of sale, of the quantity and description of stock sold, and to whom and for what price, and of the fact of the purchase money being paid. The affidavits must be filed in the office of the corporation, and copies of the same, certified by the secretary, are prima facie evidence of the facts therein stated. Certificates signed by the secretary, and under the seal of the corporation, are prima facie evidence of the contents thereof. C. C. 348.

No assessment is invalidated by a failure to make publication of the required notices, nor by the non-performance of any act required in order to enforce payment of the same; but in case of any substantial error or omission in the course of the proceedings for collection, all previous proceedings, except the levying of the assessment, are void, and publication must be begun anew. C. C. 346.

By a failure to make publication of the delinquent for at least fifteen days prior to the day fixed for sale the directors lose all power to collect the assessment under such notice, and are compelled to commence publication of notice of sale anew. *San Bernardino Co. v. Merrill*, 108 Cal. 490, 41 Pac 487.

SECTION 117—SAME.

“No action must be sustained to recover stock sold for delinquent assessments upon the ground of irregularity in the assessment, irregularity or defect of the notice of sale or

irregularity or defect in the sale, unless the party seeking to maintain such action first pays or tenders to the corporation, or the party holding the stock sold, the sum for which the same was sold, together with all subsequent assessments which may have been paid thereon, and interest on such sums from the time they were paid; and no such action must be sustained unless the same is commenced by the filing of a complaint and the issuing of a summons thereon within six months¹ after such sale was made." [C. C. 347.] No purchaser of the stock under an order of sale insufficiently noticed would get an indefeasible title, yet the sole mode of redemption is by payment of the assessment and costs to such purchaser, and such offer to redeem must be made within a reasonable time or the right of redemption is lost. [Burham v. S. F. Fuse Mfg. Co., 76 Cal. 26, 17 Pac. 939; Sayre v. Citizens Gas etc. Co., 69 Cal. 207, 10 Pac. 408.] Without a similar offer before such a sale had been made, the corporation could not be enjoined from completing the sale, because the *assessment* is valid. Burham v. S. F. Fuse Mfg. Co., 76 Cal. 26, 17 Pac. 939; C. C. 346.

This section [C. C. 347] applies only to actions to set aside assessments *irregularly* levied; it has no application to actions to restrain the collection of a *void* assessment. Herbert Craft etc. Bank v. Bank of Oakland, 65 Pac. 143 (Cal., May, 1901).

¹ See Herbert Craft Co. Bank v. Bank of Orland, 65 Pac. 143 (Cal., May, 1901).

SECTION 118—COLLECTION BY ACTION AT LAW.

"On the day specified for declaring the stock delinquent, or at any time subsequent thereto and before the sale of the delinquent stock, the board of directors may elect to waive further proceedings for the collection of the delinquent assessments,¹ or any part thereof, by sale of the stock as provided by statute [C. C. 331-348] and may elect to proceed by action to recover the amount of the assessment and the cost and expenses already incurred, or any part thereof." C. C. 349.

There are thus two remedies for unpaid assessments, one by a sale of the stock, the other by a personal action at law.² These remedies are alternative,³ and the personal remedy never lies in a case where the directors, by failure to notice or publish, have lost the power to collect by a delinquent sale founded on such notices. *San Bernardino Co. v. Merrill*, 108 Cal. 490, 41 Pac. 487.

In an action to collect an assessment, the burden of proving the assessment valid in all respects is on the corporation-plaintiff.⁴

The corporation has as against the delinquent owner and his transferees with notice, a general lien on the stock for the unpaid assess-

1 Not until the assessment is delinquent can the directors make the election to proceed by personal action. *Bank of Nat. City v. Johnson*, 65 Pac. 383 (Cal., June, 1901).

2 *San Joaquin Co. v. Beecher*, 101 Cal. 70, 35 Pac. 349; *Cal. Hotel Co. v. Callender*, 94 Cal. 120, 29 Pac. 859; *Santa Cruz etc. Co. v. Spreckels*, 65 Cal. 193, 3 Pac. 661-802.

3 *In re So. Mountain C. M. Co.*, 8 Sawyer 366. This case reverses a dictum in *in re So. Mountain, etc. Co.*, 7 Sawyer 30.

4 *Pac. Fruit Co. v. Coon*, 107 Cal. 447, 40 Pac. 542; *Santa Cruz etc. Co. v. Spreckels*, 65 Cal. 193, 3 Pac. 661, 802.

ment and costs,¹ but unless there be a valid by-law to that effect together with a notice thereof on the certificate, such lien is not assertable against a transferee for value without notice.² Where such a lien exists, it is not dependent on continued possession; all transferees take subject to it. [Craig v. Hesperia etc. Co., 112 Cal. 7, 45 Pac. 10.] It has already been seen that it is for this reason, that such a lien is no defense to an action for refusal to transfer the stock on the books or issue new certificates. [Sec. 109, *supra*.] The lien is not on the certificates, but on the stock, and the certificate is not a negotiable instrument so as to allow an innocent transferee for value to take it freed from liens or other equities. Atkins v. Gamble, 42 Cal. at 99; Sherwood v. Meadow Valley etc. Co., 50 Cal. 412; Swim v. Wilson, 90 Cal. at 129, 27 Pac. 33; Craig v. Hesperia etc. Co., 113 Cal. 7, 45 Pac. 10.

The two great distinguishing features of the California law as to calls and assessments are (a) that each of them can be collected by forced sale of the stock and (b) that assessments can be collected by personal action at law. Neither feature existed at common law. Santa Cruz etc. Co. v. Spreckels, 65 Cal. 193, 3 Pac. 661-802; see also Spurgeon v. Santa Ana Co., 120 Cal. 71, 52 Pac. 140.

¹ Lankershim Co. v. Herberger, 82 Cal. 600, 23 Pac. 134.

² Craig v. Hesperia etc. Co., 113 Cal. 7, 45 Pac. 10; Lankershim Co. v. Herberger, 82 Cal. 600, 23 Pac. 134, dictum; see Chap. XII, *supra*. Anglo Bank v. Granger's Bank, 63 Cal. 359.

SECTION 119—DIVIDENDS—FROM WHAT MADE.

Dividends must not be made except from the surplus profits arising from the business of the corporation. [C. C. 309.] "Surplus profits" means net earnings, that is to say, the excess of receipts over expenditures. [People v. Savings Union, 72 Cal. 199, 13 Pac. 498; Excelsior Co. v. Pierce, 90 Cal. 131, 27 Pac. 144.] "Receipts" means money or property actually received—what has not been received, though due and owing and secured, is not yet "receipts" or profits. Interest upon the loans or investments of a savings bank, that has matured and accrued, but which has not been collected and received in money, is not receipts or "profits," and dividends cannot be declared thereon. [People v. Savings Union, 72 Cal. 199, 13 Pac. 498.] "Expenditures" means ordinary operating expenditures. It is fully explained in Excelsior M. & W. Co. v. Pierce, 90 Cal. 131, 27 Pac. 144.

In that case, the corporation had started business by purchasing a mine, part of the price of which was an assumption of the debts of the former owners, amounting to some \$173,000. The corporation's earnings in excess of its ordinary expenditures, interest on its debt and sinking fund account were some \$450,000. The directors expended one hundred thousand dollars in permanent improvements and declared a dividend amounting to \$225,000. To pay this dividend, they were compelled to borrow, as they had used the money received in the course of busi-

ness to pay for the betterments. The corporation brought this action against the directors for wrongfully declaring and paying dividends, basing its case on the assumption that the debt originally incurred and the betterments must be paid for, before there could be any surplus, out of which to declare dividends.

The decision was for the directors. It was held "that surplus profits mean net earnings; that after deducting from gross earnings the ordinary expenditures, interest on its debt and an appropriate sinking fund, the remainder is net earnings out of which dividends may be declared. A corporation need not pay all its debts before it can declare a dividend. That it borrowed, in this case, to pay dividends only means that it used its surplus in its business for betterments and borrowed that amount again. It is the same as if it had borrowed for betterments only."

Under the holding in this case, corporations can declare stock dividends. If the corporation instead of borrowing, had sold part of its untaken shares to raise the money to pay the dividends, no objection could have been urged. It would only be another form of realizing on its assets. And if it could raise the money by selling the shares, it could have given them directly to the shareholders for the same purpose.

If directors make dividends other than from the surplus profits, their act is a dividing and withdrawing of the capital stock and is prohibited by law. [C. C. 309; *People v.*

Savings Union, 72 Cal. 199, 13 Pac. 498; Excelsior Co. v. Pierce, 90 Cal. 131, 27 Pac. 44.] The penalty for such an act is two-fold. Civilly, the directors under whose administration such dividing and withdrawing took place (except those who caused their dissent to be entered on the minutes of the directors at the time, or were not present at the meeting at which the resolution was passed) are in their individual or private capacity, jointly and severally liable to the corporation and to its creditors to the full amount of the capital stock so divided, withdrawn, paid out, or reduced. [C. C. 309.] Criminally, every director who concurs in any vote or act of the board authorizing such a dividend, is guilty of a misdemeanor. Pen. C. 560, sub. 1.

SECTION 120—NATURE OF DIVIDENDS.

Dividends accrue to the person who is owner of the stock when the dividend was declared; "owner" means the holder of the legal title. [Dow v. Jones & Curry M. Co., 31 Cal. 630.] Dividends payable on stock held by a married woman may be paid to her, her agent or attorney as if she were unmarried. [C. C. 325.]

The right to receive future dividends is an incident of the ownership of stock and passes, by implication, with the transfer of the legal title. [Dow v. Jones etc. Co., *supra*] It is perfectly valid, however, in transferring stock to expressly reserve to the transferor the right to dividends that may be subse-

quently declared. *Calkins v. Equitable etc. Ass'n*, 126 Cal. 531, 59 Pac. 30.

A stockholder has, as against the corporation, no present interest in the surplus profits, until they have been declared in the form of a dividend. *Harris v. S. F. Sugar Co.*, 41 Cal. 393; *Zellerbach v. Allenberg*, 99 Cal. 57, 33 Pac. 786.

No action by a stockholder against the corporation to obtain his share of the undivided profits lies until a dividend has been declared; surplus profits are not a liability of the corporation to the stockholder. [*Harris v. S. F. Sugar Co.*, 41 Cal. 393.] The declaring or non-declaring of a dividend is within the discretion of the directors. Courts will not interfere, except for fraud. *Zellerbach v. Allenberg*, 99 Cal. 57, 33 Pac. 786.

After a dividend has been declared, it is a debt of the corporation, but a demand upon the corporation to pay and its refusal so to do, is a condition precedent to bringing an action to collect it. [*Bills v. Silver King M'g. Co.*, 106 Cal. 9, 39 Pac. 43 (*dictum*); *Ralston v. Bank of Cal.*, 112 Cal. 208, 44 Pac. 476.] Such a demand must be made within two years or the action is outlawed. Per Beatty, C. J., in *Bills v. Silver King M'g. Co.*, 106 Cal. 9, 39 Pac. 43.

Dividends are to be apportioned upon the stock held by the stockholders. Unissued stock, or stock the legal or beneficial ownership of which is in the corporation, is not entitled

to share in dividends, nor must it be counted in apportioning dividends. [C. C. 343.] For a similar rule as to assessments, see section 116 *supra*.

CHAPTER XIV.

CORPORATE MEETINGS AND VOTING.

SEC. 121—CORPORATE MEETINGS—NECESSITY OF.

SEC. 122—SAME—HOW CALLED.

SEC. 123—VOTING—PERSON ENTITLED.

SEC. 124—SAME—ABNORMAL OWNERS.

SEC. 125—SAME—EXTENT OF RIGHT.

SEC. 126—PROXIES.

SEC. 127—VOTING TRUSTS.

SEC. 128—CUMULATIVE VOTING.

SECTION 121—CORPORATE MEETINGS—NECESSITY OF.

Such powers as by charter or by-law are given to the stockholders can only be exercised by them at a meeting, lawfully assembled and noticed. [C. C. 318.] This meeting is termed a meeting of the corporation. [C. C. 311.] All acts done at a meeting not properly called or assembled are not corporate acts and of no validity in any sense,¹ except, it may be in a particular case, to create an estoppel against the persons present and voting. See *In re Collateral L. & S. Bank*, 5 Sawyer 331.

Every corporation has power to provide by by-law, where no other provision is specially

1. *San Buenaventura etc. Co. v. Vassault*, 50 Cal. 534; *Zion M. E. Church v. Hilary*, 51 Cal. 155; *Ewing v. Oroville Mining Co.*, 56 Cal. 649.

made, for the time, place, and manner of calling and conducting its meetings [C. C. 303, sub. 1]; for the number of stockholders constituting a quorum [C. C. 303, sub. 2], and for dispensing with notice of all regular meetings of the stockholders. [C. C. 303, sub. 1.]

Unless by by-law the corporation has dispensed with notice of its regular meetings, no meeting, regular or special, can be legally assembled, without actual or constructive notice to all the stockholders. If a by-law provides that the regular meeting shall be held on a certain day of each year, but does not also state the hour of day, such a by-law is not constructive notice of the meeting. Any notice which names the day, but not the hour, of meeting is not a sufficient notice. *San Buenaventura etc. Co. v. Vassault*.

If there be any customary mode of calling a meeting and such custom is known to all the members or stockholders, a meeting called without such notice and without actual notice is not a legal meeting and its acts are void. *Zion M. E. Church v. Hilary*, 51 Cal. 155.

When notices of meeting are sent through the mail, the presumption is that, if properly stamped and addressed, they were received, and in the absence of proof, such presumption is conclusive. *Stockton, etc. Works v. Houser*, 109 Cal. 1, 41 Pac. 809.

SECTION 122—SAME—HOW CALLED.

The meetings of the stockholders must be held at the office or principal place of business

of the corporation [C. C. 319] and must be called by the person or persons designated in the by-laws. [C. C. 303, sub. 1.] If the by-laws make no provision for calling meetings or if from any cause there is no person authorized to call or preside at a meeting of the corporation, any justice of the peace of the county where such corporation is established may, on written application of three or more of the stockholders or of the members thereof, issue a warrant to one of the stockholders or members, directing him to call a meeting of the corporation by giving the notice required, and the justice may, in the same warrant, direct such person to preside at such meeting until a clerk is chosen and qualified, if there be no other officer present legally authorized to preside thereat. The application of a number of stockholders less than three, but holding a majority of the capital stock, has the same effect as an application by three or more stockholders or members. C. C. 311.

When all the stockholders or members are present at any meeting, however called or notified, and sign a written consent thereto on the record of such meeting, the doings of such meeting are as valid as if had at a meeting legally called and noticed [C. C. 317, 318]; except as to those acts for which previous notice of meeting is expressly made by statute or by the constitution a condition precedent. Art XII, Sec. 11. See *Ewing v. Oroville Mfg. Co.*, 56 Cal. 649; and note

that C. C. 318 refers only to *regular* meetings of the corporation.

Any regular or called meeting of the stockholders or members may adjourn from day to day, or time to time, if for any reason there is not present a majority of the subscribed stock or members, or no election had—such adjournment and the reasons therefor being recorded in the journal of proceedings of the board of directors. C. C. 312.

At all elections or votes had for any purpose there must be a majority of the subscribed capital stock, or of the members represented either in person or by proxy in writing. C. C. 312. For voting in general see Sec. 123, *post*. For contesting elections of directors see chapter XVI, *post*.

SECTION 123—VOTING—PERSON ENTITLED.

By a recent amendment to section 312, Civil Code [In effect July 1, 1901], the legislature has declared its will to be that every stockholder having stock in his own name on the stock books of the corporation at least ten days prior to an election is entitled to vote. This is an intentional and radical change in the law as it existed in this state from the adoption of the codes in 1872 to the present year.

Before the codes were adopted, the real owner of the stock was entitled to vote it, regardless of the fact that it stood on the books of the corporation in the name of another. [People v. Hill, 16 Cal. 113.] This

was settled by a case which decided that stock which was partnership assets, and stood on the books of the corporation in the name of the deceased partner should be voted by the surviving partner and not by the administrator of the deceased. [*Id.*] Under this ruling, as between contestants for the right to vote, the books of the corporation are of slight importance.

The codes of 1872 modified the rule by providing that only a "bona fide" stockholder having stock in his own name on the stock books of the corporation at least ten days prior to the election shall have the right to vote. The effect of this modification was not clearly seen until the Supreme Court had passed upon it a number of times. In *Stuart v. Mahoney Min. Co.*, 54 Cal. 149, it was decided that one in whose name stock stood on the books, but of which he was a bare trustee with no beneficial interest, could not vote the stock. It was held that he was not a "bona fide" stockholder. *People v. Robinson*, 64 Cal. 373, 1 Pac. 156, holds that an unregistered transfer of stock by indorsement and delivery of the certificate does not entitle the transferee to vote, which decision means that such transferee is the bona fide owner, but not the bona fide stockholder that the statute requires. It decides that the transferor in the such case is the bona fide stockholder under statute.¹

1. The only distinction between such a transferor and the bare trustee in the previous case, is that the transferor still has an interest in the stock, for if called upon for assessments, the transferee must indemnify him.

Dulin *v.* Pacific Wood & Coal Co., 103 Cal. 357, 35 Pac. 1045, 37 Pac. 207, applies to unregistered pledges of stock the same rule that the Robinson case, *supra*, applied to unregistered sales, holding that the pledgor in such case, not the pledgee, has the right to vote. Then comes the celebrated case of Smith *v.* San Francisco & North Pacific R. R. Co., 115 Cal. 584, 47 Pac. 582, which sets forth exhaustively the law on this important subject, and which case is a monument to the legal learning, of both Justice Harrison, who delivered the opinion, and of the attorney of the successful party.

In deciding that one who had no interest in the ownership of stock, but in whose name it stood on the books—in other words one who was a mere dummy—did not have the right to vote, the court took the opportunity to [Smith case, *supra*,] fully explain the meaning of the code rule that only “bona fide stockholders on the books” could vote. It is perfectly true, says the court, that a person can be a bona fide stockholder without being “owner,” as for example, a trustee of an express trust, or a pledgee who has been authorized to have himself registered on the books as transferee, and has done so, but a dummy is neither a bona fide stockholder nor an “owner.” The statute allows all bona fide stockholders to vote, irrespective of who is owner. The legislature in 1872 [C. C. 312 original] intentionally changed the right to vote from the “owner”

to the bona fide stockholder, and when it did so it had in mind the early decision that the real "owner" whether registered or not, could vote. The rule now is that others besides "owners" can be stockholders, but only such stockholders as are "bona fide" can vote.

Supplementing this last sentence, by deciding that "stockholders" here means the person whose name is registered on the books as owner; and that every such person, except a mere dummy, is "bona fide" a stockholder, the court announced a simple rule, covering all the possible contentions as to the meaning of the statute, and at the same time affirming and explaining its own former holdings. Smith case, *supra*.

The commissioners for the revision and reform of the law (1901), did not approve of the wisdom of the law as thus interpreted, and for the purpose of giving to persons whose names appear on the books as owners the right to vote, and to take away from the election officers the authority to deny such stockholders the right to vote, on the claim that for some reason they are not bona fide stockholders,¹ proposed to the legislature to omit the words "bona fide" before "stockholders" in the statute.² As this suggestion was embodied in the bill to revise the Civil Code, which bill passed "*en bloc*," we are now compelled to say that

1. Report of the commissioners, respecting the Civil Code (1901) p. 31.

2. Stat. 1901, p. 332, State ed.

the legislature approved of the change, whether we believe that statement or not.

The apparent result of this latest change is to give the right to vote to the owner of the stock whose name appears as such on the books of the corporation, and to deny it both to the owner, if he is not so registered, and to everybody else.³

SECTION 124—ABNORMAL OWNERS.

There are certain persons who though registered and holding the legal title to stock, together with the full or partial beneficial interest are yet for other reasons not allowed to vote. Such persons are abnormal owners.

The shares of stock of the estate of a minor, or insane person, are to be voted by his guardian. C. C. 313.

A married woman may give a valid proxy, touching any of the shares of stock standing in her name on the books of the corporation, which proxy is valid without the signature of her husband. C. C. 325.

One who though registered as owner, holds as trustee for, or pledgee from, the corporation, cannot vote it for any purpose. *Brewster v. Hartley*, 37 Cal. 15. And when a corporation has taken and holds the title to its own stock, such stock being subject to the will of a majority of the remaining shares, cannot be voted for any purpose or counted for the purpose of making or breaking a quo-

3. Compare C. C. 585, relating to registration on the books of mining corporations of the names of the real owners of the stock.

rum. C. C. 344. *Robinson v. Gold and Silver Mining Co.*, 72 Cal. 32, 13 Pac. 65.

The voting power of shares belonging to the estate of a deceased devolves by operation of law on the administrator or executor. No formal transfer to such personal representative is necessary. C. C. 313. *Market Street Railroad Co. v. Hellman*, 109 Cal. 571, 42 Pac. 225.

SECTION 125—SAME—EXTENT OF RIGHT.

The power to vote is an incident to stockholding, and an incident that is given by the charter or general law, not by the corporation. [C. C. 312, Const. Art. XII, Sec. 12.] It is not possible for a corporation, either by by-law, resolution or contract, to confer voting power on one who is not a stockholder, or to deny such power to one who is. [*Brewster v. Hartley*, 37 Cal. 15.] Nor can the corporation narrow or enlarge the extent of the right to vote thus given by statute.

SECTION 126—PROXIES.

The same section of the code which gives to stockholders the right to vote, declares that this right can be exercised in person or by proxy in writing,¹ and contains no limitation as to who that proxy may be. The stockholder's choice of a proxy is thus unlimited, and cannot be controlled or conditioned by the corporation.² Therefore, a by-law of the cor-

1. Section 312, C. C., *Stuart v. Mahoney Min. Co.*, 54 Cal. 149.

2. *Dulin v. Pacific Wood & Coal Co.*, 103 Cal. 357, 35 Pac. 1045, 37 Pac. 207; *People's etc. Bank v. Superior Ct.*, 104 Cal. 649, 38 Pac. 482; *Smith v. S. F. & N. P. R. R. Co.*, 115 Cal. 584, 47 Pac. 582.

poration that only a stockholder can be the proxy of another is void as an attempted limitation on the power to select a proxy.³ The fact that another section of the code [C. C. 303] gives corporations power to regulate by by-law the "mode of voting by proxy" does not give them the power to restrict the choice of proxies. *People's etc. Bank v. Superior Court*, 104 Cal. 649, 38 Pac. 453; *Smith v. S. F. & N. P. R. R. Co.*, 115 Cal. 584, 47 Pac. 582.

SECTION 127—VOTING TRUSTS.

The power of the stockholder to separate the voting power of the stock from the ownership of it comes from the right to vote by proxy.⁴ If the purpose for which the voting power is transferred is legal—and it is legal unless the purpose is inimical to the business interests of the corporation—the transfer is perfectly valid, and neither the corporation nor any other stockholder or creditor can object.⁵ If in addition the transfer is founded on a valid consideration, it is a contract that can be specifically enforced, and being a power coupled with an interest, cannot be revoked at will. *Smith v. S. F. & N. P. R. R. Co.*, 115 Cal. 584, 47 Pac. 582.

"There is no doubt," says the court in *Dulin v. Pacific W. & C. Co.*, 103 Cal. 357, 37

3. *People's etc. Bank v. Superior Ct.*, 104 Cal. 649, 38 Pac. 45.

4. *Smith v. S. F. & N. P. R. R. Co.*, 115 Cal. 584, 47 Pac. 582.

5. *Dulin v. Mahoney Min. Co.*, 103 Cal. 357, 35 Pac. 1045, 37 Pac. 207; *Smith v. S. F. & N. P. R. R. Co.*, 115 Cal. 584, 47 Pac. 582.

Pac. 207, "that a stockholder can make a valid agreement in writing to confer upon another his right to vote by giving a written proxy. If made for a good consideration, such contract is enforceable. It is not against any public policy."

On the other hand, no stockholder or director can make a valid contract that he (personally) will vote in a certain manner [*Id.*], for such a sale of his vote deprives him of the right to use his discretion, which discretion the corporation is entitled to rely on.

The stockholder, if he sees fit, can vote against what he believes to be the best interests of the corporation; that is his privilege. The proxy can do the same; he can use his power against the wishes of the owner or the interest of the corporation if he desires. The law makes no objection in either case. Public policy is satisfied if the voter had discretion in voting, and with the use he makes of his discretion has no concern. But public policy does condemn and refuses to enforce any contract by which the voter, whether he be owner or proxy, is to be deprived of his discretion. If the owner for a consideration binds himself to vote in a certain way, the law presumes that the person who bought the vote has some purpose hostile to the corporation, on the theory that he would not have paid a stockholder to vote for the corporation's best interest, which is necessarily the best interest of the stockholder also. *Smith v. S. F. & N. P. R. R. Co.*, 115 Cal. 584, 47 Pac. 582.

If the purpose for which the vote is bought or sold to a proxy is that the proxy shall intentionally vote against the interest of the corporation, public policy condemns that contract twofold, first, because it deprives the voter of his discretion, and second, it is intended as a wrong to the corporation. Like all contracts to do a wrong to a third party, it is unenforceable. *Smith v. S. F. & N. P. R. R. Co.*, 115 Cal. 584, 47 Pac. 582.

SECTION 128—CUMULATIVE VOTING.

In all elections *for directors or managers* of the corporation, every voter, whether stockholder or proxy, has the right to cumulate his vote, that is, to cast the number of his shares multiplied by the number of directors or managers to be chosen for one director or manager, or to distribute his vote on the same principle among as many candidates as he sees fit. [Const. Art. XII, Sec. 12.] This is a constitutional provision, and it also declares that directors or managers cannot be elected in any other manner, except in certain co-operative societies. Obviously, an election where the method adopted was to vote by separate ballot for each director violated the constitution, with the result that the election was void. *Wright v. Central etc. Water Co.*, 67 Cal. 532, 8 Pac. 70.

CHAPTER XV.

SUING OR DEFENDING ON BEHALF OF THE CORPORATION.

SEC. 129—BASIS OF THE RIGHT.

SEC. 130—EXTENT OF THE RIGHT.

SEC. 131—PREREQUISITES.

SEC. 132—PARTIES AND PLEADING.

SECTION 129—BASIS OF THE RIGHT.

When a stockholder commences an action or defends one, he does so either on his own behalf or on behalf of the corporation, and which of the two characters he is asserting, depends on the nature of the right in controversy.

The stockholder, as such, has no right to bring a suit in behalf of the corporation. *Bacon v. Irvine*, 70 Cal. 221, 11 Pac. 646.

The theory on which he is, in certain cases, allowed to sue or defend in its behalf is that its legal agents, whose duty it is to protect it, either refuse or are disqualified to act.¹ It is a remedy given to the stockholder by equity to prevent the officers or agents of the corporation from doing acts which are a breach of their trust and to redress such acts, as far as possible, after they have been done.²

1. *Beach v. Cooper*, 72 Cal. 99, 13 Pac. 161.

2. *Wright v. Oroville etc. Mining Co.*, 40 Cal. 20; *Ashton v. Dashaway Asso.*, 84 Cal. 61, 23 Pac. 1091.

The remedy is given by equity, because at law, the stockholder has no right to sue or be sued on behalf of the corporation, it being an attribute of all corporations to sue and be sued in their own name [see chap. II, *supra*]. But though asserted in equity, the right in dispute is not on that account changed from a legal to an equitable one. *Chetwood v. Cal. Nat. Bank*, 113 Cal. 414, 45 Pac. 704.

SECTION 130—EXTENT OF THE RIGHT.

In order that a stockholder may sue in his own name on behalf of the corporation in a suit wherein the corporation is the appropriate plaintiff there must exist as the foundation of the suit:

1. Some action or threatened action of the directors which is beyond the authority conferred on them by charter, or

2. Such a fraudulent transaction, completed or contemplated by the acting managers as will result in serious injury to the corporation or to the stockholders, or

3. When the board of directors are acting for their own interest, in a manner destructive of the corporation itself, or of the rights of the other stockholders, or

4. Where a majority of the shareholders themselves are oppressively and illegally pursuing a course in the name of the corporation which is in violation of the rights of the other shareholders and which can only be restrained by a court of equity. *Hawes v. Oakland*, 104

U. S. 450, appeal from the Circuit Court for the Northern District of California.

When suit is brought by a shareholder setting out such facts as the foregoing, the suit is in behalf of the corporation. When the controversy is over some other right the shareholder is suing in his own behalf. For example, a contest between individuals over the ownership of stock [*Wickersham v. Crittenden*, 106 Cal. 329, 39 Pac. 603], or an action by the bondholders (some of whom were also stockholders) of a water company, to restrain the municipality from fixing the water rates so low as to impair their securities,¹ or an action to restrain directors from committing waste or destruction,² are actions brought in behalf of the individual plaintiff and not to assert any rights of the corporation. In such cases the corporation is not a necessary party. *Consolidated Water Co. v. City of San Diego*, 89 Fed. 272.

When the action is on behalf of the corporation no rights can be asserted that could not have been asserted by the corporation itself,³ and whatever defenses could have been set up by or against the corporation itself, can be so set up by or against the stockholders.⁴ If in a suit by a third party against the corporation, its legal officers fail to make an honest defense, the

1 *Consolidated W. Co. v. City of San Diego*, 89 Fed. 272.

2. *Parrot v. Byers*, 40 Cal. 614; *Wickersham v. Crittenden*, 93 Cal. 17, 38 Pac. 728 (dictum.)

3. *Waymire v. S. F. etc. R. R. Co.*, 112 Cal. 646, 41 Pac. 1086.

4. *Wickersham v. Crittenden*, 110 Cal. 332, 42 Pac. 893.

right of the stockholder to intervene and defend for the corporation is similar to his right to sue in behalf of the corporation. *Waymire v. S. F. etc. R. R. Co.*, 112 Cal. 646, 42 Pac. 893; see also *Wright v. Oroville etc. Mg. Co.*, 40 Cal. at 28, where a stockholder, who redeemed the corporate property from the purchaser at a sheriff's sale fraudulently allowed by the directors, compelled the corporation to reimburse him for the amount paid to redeem.

Any judgment that is recovered in an action wherein a stockholder sues in behalf of the corporation is for the benefit of the corporation, and any fund received must, after the litigation is at an end, be turned over to the corporation, but the diligent stockholder is entitled to retain the costs and expenses of litigation, including counsel fees. *Chetwood v. Cal. Nat. Bank*, 113 Cal. 649, 45 Pac. 864; *Fox v. Hale and Norcross Co.*, 108 Cal. 475, 41 Pac. 328.

SECTION 131—PREREQUISITES.

In addition to the facts which must exist as the foundation of the suit [Sec. 130 *supra*], it is equally important that before the stockholder is permitted in his own name to institute and conduct a litigation which usually belongs to the corporation, he should show, to the satisfaction of the court, that he has exhausted all the means within his reach to obtain, within the corporation itself, the redress of his grievances. He must make an

earnest not a simulated, effort with the managing body of the corporation to induce remedial action on its part and this must be apparent to the court. If time permits or has permitted, and he has failed with the directors, he must also show that he has made an honest effort to obtain action by the stockholders as a body, in the matter of which he complains.

And he must show a case, if this is not done, where it could not be done or was not reasonable to require it. *Hawes v. Oakland*, 104 U. S. 450.

If the demand made on the directors does not inform them of what the plaintiff complains, and does not set out the facts, it is a simulated, not a bona fide, demand, and does not give the plaintiff the right to bring the suit. *Bacon v. Irvine*, 70 Cal. 221, 11 Pac. 646; *Morrison v. Stone*, 103 Cal. 94, 37 Pac. 142.

An allegation that the defendants are "the" directors, and that they did the wrongful acts complained of, is a sufficient allegation to show that a demand upon them to bring the suit would have been futile; the allegation means that they are "all" the directors. [*Parrott v. Byers*, 40 Cal. 614.] An allegation that the defendants are a majority of the directors of the corporation, and that they did the fraudulent acts complained of, dispenses with the necessity of averring a demand that they bring suit. *Smith v. Dorn*, 96 Cal. 73, 30 Pac. 1024; *Moyle v. Lander's Adms.*, 83

Cal. 579, 23 Pac. 798; *Ashton v. Dashaway Asso.*, 84 Cal. 61, 23 Pac. 1091; *Neall v. Hill*, 16 Cal. 145; *Cogswell v. Bull*, 39 Cal. 320; *Wickersham v. Crittenden*, 93 Cal. 17, 28 Pac. 788; *Waymire v. S. F. etc. R. R. Co.*, 112 Cal. 646, 44 Pac. 1086.

Any averment, with appropriate facts, which shows to the court that a demand on the directors would be an idle formality, dispenses with the necessity for such demand;¹ but an averment that others have made the attempt to secure redress and were unsuccessful does not; the bill must disclose plaintiff's own efforts. *Dannmeyer v. Coleman*, 8 Saw. 51.

SECTION 132—PARTIES AND PLEADING.

It is necessary to join the corporation as a party defendant in all actions brought on its behalf by a stockholder or stockholders, because, as the right asserted belongs to the corporation, it is an interested party. *Wickersham v. Crittenden*, 93 Cal. 17, 28 Pac. 788; *Moyle v. Lander's Adms.*, 83 Cal. 579, 23 Pac. 798; *Beach v. Cooper*, 72 Cal. 99, 13 Pac. 161; *Bell v. Donahoe*, 17 Fed. 710; *Dannmeyer v. Coleman*, 8 Sawyer 51; *Hawes v. Oakland*, 104 U. S. 450; *Smith v. Dorn*, 96 Cal. 73, 30 Pac. 1024.

The corporation, though joined as a defendant, is so far considered the real plaintiff, that if it be a California corporation, and the stockholder-plaintiff be an alien, the federal

1. *Wickersham v. Crittenden*, 106 Cal. 329, 39 Pac. 603. See also *Gorham v. Gilson*, 28 Cal. 480; *Dannmeyer v. Coleman*, 8 Sawyer 51; *Shively v. Eureka etc. M. Co.*, 129 Cal. 293, 61 Pac. 939; *Whitehead v. Sweet*, 126 Cal. at 73, 58 Pac. 376.

courts are ousted of jurisdiction. *Dannmeyer v. Coleman*, 8 Sawyer 51.

The directors, though they were the persons who committed the frauds complained of, are not always necessary parties; for example, in an action by a stockholder to set aside a sale to defendant of all the corporation's property, on the ground of a conspiracy between the defendant and the directors, such directors are not necessary parties. *Smith v. Dorn*, 96 Cal. 73, 30 Pac. 1024.

The complaint, in addition to setting out the facts which constitute the basis of the action and the necessary averments as to a demand on the directors and stockholders, or an excuse for the failure to so demand, must contain an allegation that the plaintiff was a shareholder at the time of the transactions of which he complains, or that the shares have devolved upon him since by operation of law. [*Hawes v. Oakland*, 104 U. S. 450.] If he purchased the shares subsequent to the transaction, he cannot bring the suit, as it would in such a case be of a speculative nature. *Dannmeyer v. Coleman*, 8 Sawyer 51.

If the suit is brought in the federal courts, it must also aver that the suit is not a collusive one to confer jurisdiction on the United States courts. *Hawes v. Oakland*, 104 U. S. 450.

In form, the bill is by one or more stockholders in behalf of all the rest and of the corporation. C. C. P. 382. *Baker v. Ducker*, 79 Cal. 365, 21 Pac. 764.

CHAPTER XVI.

DIRECTORS.

- SEC. 133—POWERS—THE GRANT.
- SEC. 134—SAME—STATUTORY RESTRICTIONS ON GRANT.
- SEC. 135—SAME—ADDITIONAL RESTRICTIONS IN MINING CORPORATIONS.
- SEC. 136—POWERS OF INDIVIDUAL DIRECTORS.
- SEC. 137—LIABILITIES—FIDUCIARY RELATION.
- SEC. 138—SAME.
- SEC. 139—SAME—DEALINGS OF DIRECTOR WITH OTHER AGENTS OF THE CORPORATION.
- SEC. 140—SAME—DEALINGS OF DIRECTOR WITH HIMSELF, AS AGENT OF THE CORPORATION.
- SEC. 141—STATUTORY PENALTIES—FOR MONEY MISAPPROPRIATED.
- SEC. 142—SAME—PROPERTY WRONGFULLY DIVERTED.
- SEC. 143—SAME—FOR FALSE RECORDS, REPORTS, ETC.
- SEC. 144—SAME—WHAT DIRECTORS LIABLE AND NATURE OF LIABILITY.
- SEC. 145—ADDITIONAL PENALTIES IN MINING CORPORATIONS.
- SEC. 146—MEETINGS—NECESSITY OF.
- SEC. 147—TIME, PLACE AND NOTICE OF MEETING.
- SEC. 148—BY-LAWS—NATURE OF.
- SEC. 149—SAME—ADOPTION, ALTERATION AND REPEAL.
- SEC. 150—SUBJECT-MATTER OF BY-LAWS.
- SEC. 151—JUDICIAL CONSTRUCTION OF CERTAIN BY-LAWS.
- SEC. 152—ELECTION OF DIRECTORS—TIME AND METHOD
- SEC. 153—SAME—CONTESTING ELECTIONS.
- SEC. 154—REMOVAL OF DIRECTORS.
- SEC. 155—DE FACTO DIRECTORS.

SECTION 133—POWERS—THE GRANT.

The general corporation law of the state [C. C. 305] declares that the corporate powers,

business and property of all corporations organized under the laws of California must be exercised, conducted and controlled by a board of not less than five directors. It would, of course, have been competent for the legislature to lodge all the powers of the corporation in the stockholders, and to have declared that the directors should have no powers except such as are given them by the stockholders,¹ but it has declared its policy to be otherwise. The above section of the code [C. C. 305] is an express grant to the board of directors of all the powers of the corporation, and whenever the directors have done an act that the corporation has power to do, one who would successfully contest their authority can only do so by showing an express statute or constitutional provision depriving them of the power to perform the act in controversy. *Schallard v. Eel R. etc. Co.*, 70 Cal. 144, 11 Pac. 590; *So. Cal. etc. Asso. v. Bustamente*, 52 Cal. 192; *Bates v. Coronado Beach Co.*, 109 Cal. 160, 41 Pac. 851.

The conduct of the corporate affairs is left to the business discretion of the directors, and as long as they are acting in good faith, no matter how unfortunate their management may be, no court can interfere with them in any way.² That their management incident-

1. It is interesting to note that this was actually done in an act relating to turnpike corporations, which was in force prior to the codes. Stat. 1853, p. 169, Sec. 19. See *Forbes v. San Rafael etc. Co.*, 50 Cal. 340.

2. *Donahoe v. Mariposa etc. Co.*, 66 Cal. 317, 5 Pac. 495; *Bates v. Coronado Beach Co.*, 109 Cal. 160, 41 Pac. 851.

ally redounds to the personal benefit of a director, or of all of them, is immaterial, if the acts are within the legitimate scope of the objects for which the corporation is organized. [Bucksport etc. Co. v. Edinburg etc. Co., 68 Fed. 972.] Within such limits the simple fact that the directors have acted, is a determination by them that their doings are essential to the corporation's business affairs; which determination, if bona fide, is conclusive on the courts. *Bates v. Coronado Beach Co.*, 109 Cal. 160, 41 Pac. 851.

If it can be proved in any case that the purpose for which the directors have acted, or are about to act, is an unlawful one—as for example, a long lease of all the property of the corporation by an outgoing board, made to take the property out of the control of those who were about to succeed to the control of the corporation—such act would be restrained or set aside. *Mahoney M. Co. v. Bennett*, 5 Sawyer 141.

Whatever powers a board of directors have, can, if the board sees fit, be exercised through an agent. What it can do “per se” it can do “per alium.” *Andres v. Fry*, 113 Cal. 124, 45 Pac. 534; *Abbott v. '76 Land Co.*, 87 Cal. 323, 25 Pac. 693; *Gashwiler v. Willis*, 33 Cal. 11 at p. 20.

That the powers of the corporation are lodged in the board of directors and not in the directors individually, has already been discussed. Chapter VII, *supra*.

SECTION 134—SAME—STATUTORY RESTRICTIONS
ON GRANT.

The directors must not make dividends, except from surplus profits [Chap. XIII, *supra.*], nor must they divide, withdraw, or pay to the stockholders, or any of them, any part of the capital stock, nor reduce or increase the capital stock, except in accordance with the methods which the law especially prescribes [See Sec. 88, *supra.*], nor must they create debts beyond their subscribed capital stock. C. C. 309.

For a violation of any of these provisions, the directors under whose administration the same may have happened (except those who dissented of record, or were not present at the meeting which authorized such violation), are individually liable, jointly and severally, to the corporation and to its creditors, to the full amount of the capital withdrawn or debt contracted. [C. C. 309; Sec. 142 *post.*] It is, in addition, a misdemeanor to violate the provisions as to dividends or as to withdrawing capital stock [P. C. 560], but there is no section of the penal code making it a crime for directors to contract debts beyond the amount of their subscribed capital stock, except in the case of railroad corporations. P. C. 566.

The question arises whether the statutory penalties are the only penalties, or whether the restrictions go to the power of directors, so as to make the prohibited acts void. It has

already been seen that the restriction against withdrawing capital stock [Secs. 64, 79, *supra*], and against making dividends except from surplus profits [Sec. 119, *supra*], curtails the power both of the directors and of the corporation, and that such acts are absolutely void. *Gashwiler v. Willis*, 33 Cal. 11; *Kohl v. Lilienthal*, 81 Cal. 378, 22 Pac. 689.

But with reference to the restriction on the amount of debt that may be contracted, a different rule prevails. Money or property received by a corporation under a contract it had no power to make, must be paid for. [Chap. VIII, *supra*.] An early case said that this means that the debt limit does not apply to obligations imposed by law,¹ and the only inference that can be drawn from *Sullivan v. Triunfo G. & S. Y. Co.*, 29 Cal. 586, another early case, is that the only effect of exceeding the debt limit is to make the directors personally liable. While the decisions in these two cases would have been the same whether the creditor succeeded on a quantum meruit or on the contract itself, it has been held in a case where it was necessary to directly decide the question—a case where the corporation was sued on a non-negotiable note and mortgage, the obligation of which exceeded the amount of its subscribed capital stock—that the debt limit was “in terrorem” and the corporation was liable. The only penalty is the personal one, visited on the directors. Under-

1. *Argenti v. San Francisco*, 16 Cal. 256.

hill v. Santa Barbara Co., 93 Cal. 300, 28 Pac. 1049.

SECTION 135—SAME—ADDITIONAL RESTRICTIONS
IN MINING CORPORATIONS.

In mining corporations it is not lawful for the directors to sell or alienate any part of the corporation's mining ground, nor to purchase any *additional* mining ground, unless such act be ratified by the holders of two-thirds of the outstanding capital stock.¹ This statute is intended to apply to all mining corporations in the state, domestic or foreign,² and restricts the power of the directors. A deed of the corporation's mining property, made by the directors, but not ratified by two-thirds of the stock, does not divest the corporation of its title.³ Similarly, a mortgage, not given with the consent of the holders of two-thirds of the stock, as required by the statute, is invalid and cannot be foreclosed.⁴ It is to be noted that while the statute deprives the directors of the sole power to sell any of its mining ground, it only deprives them of the sole power to purchase "additional" mining ground. Accordingly, it has been held that unless one who seeks to set aside a purchase of mining land proves it to be "additional"

1. Stat. 1890, p. 31, as amended, Stat. 1897, p. 96, codified (1901) C. C. 584.

2. Williams v. Gold Hill M. Co., 96 Fed. 454.

3. McShane v. Carter, 80 Cal. 310, 22 Pac. 178; Pekin Co. v. Kennedy, 81 Cal. 356, 22 Pac. 679.

4. Graves v. Mono Lake Co., 81 Cal. 303, 22 Pac. 665.

ground, he makes out no case. *Granite etc. Co. v. Maginnis*, 118 Cal. 131, 50 Pac. 269.

The statute does not confer on the stockholders the power to purchase or alienate the mining ground, but only requires that such an act, after being made by the directors, must also receive the consent of the stockholders. It does not dispense with the exercise of corporate action by the board of directors. *Curtin v. Salmon R. etc. Co.*, 130 Cal. 345, 62 Pac. 552. See chapter VII, *supra*.

Whether or not the contract is one of selling, leasing or otherwise disposing, within the meaning of the statute, or simply one of hiring or "farming on shares," is often a difficult question of fact. *Hudepohl v. Liberty Hill etc. Co.*, 80 Cal. 553, 22 Pac. 339.

No one except a stockholder in the corporation can raise any objection to the acquisition by it of any additional ground or other property. C. C. 584.

SECTION 136—POWERS OF INDIVIDUAL DIRECTORS.

An individual director, except when acting at a meeting of the board as a member thereof, or when performing acts pursuant to authority specially conferred on him by the board, has no power to bind the corporation.¹ While engaged in performing such duties, he is an agent of the corporation and has the like power to bind it that any agent has to bind

¹ See Chap. VII, *supra*; also *Gashwiler v. Willis*, 33 Cal. 11; *Brown v. Valley View M. Co.*, 127 Cal. 630, 60 Pac. 424.

his principal—but not more.¹ Knowledge of a fact concerning the corporation's affairs, acquired while engaged in the discharge of his official duties or of matters specially trusted to him, is considered in law the knowledge of the corporation, but unless such knowledge is acquired in the management or conduct of its business, it is not attributable to the corporation. If known casually or privately, or by rumor, and not communicated to the corporation or its agents, the corporation is not chargeable with the knowledge of a director. *Lothian v. Wood*, 55 Cal. 159; *Tafft v. Presidio Co.*, 84 Cal. 131, 24 Pac. 436; *Richards v. Daley*, 116 Cal. 333, 48 Pac. 221.

Knowledge of a director, relating to transactions with the corporation in which he is personally interested and concerned and in which he acts for himself, is not knowledge imputable to the corporation. Whether such director or some other director represents the corporation in the transaction is immaterial, as the law presumes that the personal interest of the director, being adverse to that of the corporation, will restrain him from disclosing his knowledge to it. [*Whittle v. Vanderbilt M. Co.*, 83 Fed. 48.] This is a well-known doctrine of agency, applicable to all agents and principals.

SECTION 137—LIABILITIES—FIDUCIARY RELATION.

Directors hold a fiduciary position with

1. *Whittle v. Vanderbilt M. Co.*, 83 Fed. 48.

respect to the corporation and to the stockholders. By acceptance of office they preclude themselves from doing any acts or engaging in any transaction in which their private interest will conflict with the duties they owe to the corporation, and from making any use of their power or of the corporate property for their individual advantage.¹ It is not strictly accurate to speak of directors as trustees,² but as their acts are the acts of the corporation, whose hands and mind they are, and as the California decisions hold that the code provisions³ relating to the liabilities of trustees apply also to directors,⁴ to designate the relation between the directors and the corporation or stockholders as a "trust" relation, rather than as an "agency," which is nearer its true nature, does no harm. As the cases, when determining the liabilities of directors, call the relationship a trust, the same nomenclature will be used herein.

Courts of equity will restrain directors from doing any acts which constitute a breach of their trust;⁵ and after the acts are done will, if no innocent parties' rights intervene, set aside such acts.⁶ The reservation for the ben-

1. *Wickersham v. Crittenden*, 93 Cal. 17, 28 Pac. 788; *Farmers Bank v. Downey*, 58 Cal. 466; *Wilbur v. Lynde*, 49 Cal. 290; *Wright v. Oroville etc. Co.*, 40 Cal. 20.

2. A trust implies that legal title is in the trustee.

3. C. C. 2228-2239.

4. *Chamberlain v. Pac. Wool etc. Co.*, 54 Cal. 103; *Sims v. Petaluma Gas Co.*, 63 Pac. 1011 (Cal. 1901); *Graves v. Mono Lake Co.*, 81 Cal. 303, 22 Pac. 665.

5. *Hardee v. Sunset Oil Co.*, 56 Fed. 51. See next note.

6. *Wright v. Oroville etc. M. Co.*, 40 Cal. 20; *Bank of B. N. A. v. Cahn*, 79 Cal. 463, 21 Pac. 863.

efit of innocent third parties means that acts which the directors have power to do, but which violate the duties of a trustee to his beneficiary, are not void but voidable. See Sec. 140, *post*.

Any profit or bonus that a director makes out of dealings with the funds or property of the corporation belongs to it, and for the amount of such profit or bonus the director receiving the same is personally liable to the corporation. [Farmers' Bank *v.* Downey, 53 Cal. 466; Wickersham *v.* Crittenden, 93 Cal. 17, 28 Pac. 788.] Courts are assiduous, in scrutinizing such transactions, to protect the interests of the corporation. [C. C. 2235, Woodroof *v.* Howes, 88 Cal. 184, 26 Pac. 111.] An inadequate consideration in a sale or transfer by a corporation to a director thereof raises a presumption of fraud, which must be rebutted. Shattuck *v.* Oakland Smelting Co., 58 Cal. 550; Galson *v.* Dunlap, 73 Cal. 157, 14 Pac. 576.

The fairness or honesty of any transaction which violates the director's duty not to make a profit, is no defense to an action to set the transaction aside. Wickersham *v.* Crittenden, 93 Cal. 17, 28 Pac. 788; see Sec. 140, *post*.

The obligations of trustees, which are also the obligations of directors, are declared by the Civil Code in the following language:

"In all matters connected with his trust, a trustee is bound to act in the highest good faith toward his beneficiary, and may not obtain any advantage therein over the latter

by the slightest misrepresentation, concealment, threat or adverse pressure of any kind. [C. C. 2228.] A trustee may not use or deal with the trust property for his own profit, or for any other purpose unconnected with the trust, in any manner. C. C. 2229.

Neither a trustee nor any of his agents may take part in any transaction concerning the trust in which he or any one for whom he acts as agent has an interest, present or contingent, adverse to that of his beneficiary, except that when the beneficiary, having capacity to contract, with a full knowledge of the motives of the trustees, and of all other facts concerning the transaction which might affect his own decision, and without the use of any influence on the part of the trustee, permits him to do so. C. C. 2230.

A trustee may not use the influence which his position gives him to obtain any advantage from his beneficiary. [C. C. 2231.] No trustee, so long as he remains in the trust, may undertake another trust adverse in its nature to the interest of his beneficiary in the subject of the trust, without the consent of the latter. [C. C. 2232.] If a trustee acquires any interest, or becomes charged with any duty, adverse to the interest of his beneficiary in the subject-matter of the trust, he must immediately inform the latter thereof, and may be at once removed. C. C. 2233.¹

Every violation of the above provisions is a

1. It is doubtful if this was intended to apply to the removal of directors. See Sec. 154, *post*.

fraud against the beneficiary of the trust [C. C. 2234], and all transactions between a trustee and his beneficiary during the existence of the trust, or while the influence acquired by the trustee remains, by which he obtains any advantage from his beneficiary, are presumed to be entered into by the latter without sufficient consideration, and under undue influence. [C. C. 2235.] A trustee who willfully and unnecessarily mingles the trust property with his own, so as to constitute himself in appearance its absolute owner, is liable for its safety in all events, and for the value of its use [C. C. 2236], while a trustee who uses or disposes of the trust property, contrary to his duties as trustee, may, at the option of the beneficiary, be required to account for all profits so made, or to pay the value of its use, and, if he has disposed thereof, to replace it, with its fruits, or to account for its proceeds, with interest. It is a fraud on the corporation, for a director to buy up its outstanding notes at a discount and receive full value for the same from the corporation. The director can be compelled to surrender the notes to the corporation at the price he paid for them. [Bonney v. Tilley, 109 Cal. 346, 42 Pac. 439. C. C. 2237.] If, however, the unauthorized acts are done in good faith, with intent to serve the interests of the beneficiary, the trustee is liable only to make good whatever is lost to the beneficiary by his error. C. C. 2238.

A trustee is responsible for the wrongful acts of a co-trustee to which he consented, or which, by his negligence, he enabled the latter to commit, but for no others. C. C. 2239.

Like all other trustees, directors are estopped to assert any title adverse to that of the corporation as to any property the corporation was in possession of when they took office. [Parrott v. Byers, 40 Cal. 614.] Also they are estopped to deny the due incorporation of the company in which they have accepted office. Parrott v. Byers, 40 Cal. 614.

SECTION 138—SAME.

A director can bind the corporation only in one of two ways; either (a) by a vote at a meeting of the board, or (b) by acts done in pursuance of an authority conferred upon him by the board. See Sec. 136, *supra*.

In determining the liability of the corporation for acts of its directors, in which those directors, or some of them, were also the other contracting party, it is necessary to know in which of the two modes the interested director or directors acted when purporting to bind the corporation, for the effect is not the same in both cases.

SECTION 139—SAME—DEALINGS OF DIRECTOR WITH OTHER AGENTS OF THE CORPORATION.

If a contract or conveyance is made directly pursuant to a resolution of the board of directors, and if the majority of the quorum by which this resolution is passed consists of directors who have no personal interest in the

subject matter, such contract is neither voidable nor void as to the corporation, because the other contracting party is a member of the board. If a majority of the board besides the interested director vote for the resolution, his interest is immaterial, and the resolution is a valid corporate act. [*Porter v. Lassen County etc. Co.*, 127 Cal. 261, 59 Pac. 563; *Reclamation Dist. v. McCullah*, 124 Cal. 175, 56 Pac. 887 (*dictum*). The power of the board is to be exercised by a quorum present and *acting* [C. C. 305], and if there be such a quorum without counting the director in whose favor the act to be done is to be made, there is a legal quorum present with power to authorize the act. *Curtin v. Salmon R. Co.*, 130 Cal. 345, 62 Pac. 552.

If, however, such a quorum or such a majority vote can only be counted by including the interested director or directors, there is no quorum present and *acting*,¹ and such transaction, if it be a contract, cannot be enforced against the corporation, if a conveyance, can be set aside at the corporation's demand;² such an act is voidable, not void.³ The right of avoidance is personal to the corporation

1. *Curtin v. Salmon R. Co.*, 130 Cal. 345, 62 Pac. 552; *Smith v. Los Angeles etc. Asso.*, 78 Cal. 289, 20 Pac. 677; *Reclamation Dist. v. McCullah*, 124 Cal. 175, 56 Pac. 887.

2. *Shattuck v. Oakland Smelting Co.*, 58 Cal. 550; *Wickersham v. Crittenden*, 93 Cal. 17, 28 Pac. 788; *Wickersham v. Crittenden*, 106 Cal. 327, 39 Pac. 602; *Phillips v. Sanger L. Co.*, 130 Cal. 431, 62 Pac. 749.

3. *Fudickar v. East Riverside Dist.*, 109 Cal. 29, 41 Pac. 1024; *Bassett v. Fairchild*, 64 Pac. 1082 (Cal. May 1901). See cases in preceding note.

and cannot be transferred. *Fudickar v. East Riverside Dist.*, 109 Cal. 29, 41 Pac. 1024.

If such acts are ratified by the corporation it becomes bound thereby,⁴ but the interested director or directors cannot participate in the ratification.⁵

It is to be noted that such acts are voidable, not because one party thereto is a director and the other party is the corporation—it is not because there is anything in the nature of the office of director that prevents the incumbent from contracting with the corporation⁶—but because the corporate will in favor of the interested director was controlled by him. It follows therefore that whenever the corporate will is manifested through some person or agent other than the director in whose favor the liability is to be created, such manifestation in his favor is a valid corporate act.

Accordingly, the officers or agents or uninterested quorum of the board of directors can borrow from a director and the corporation is bound to pay. *Sutter St. etc. Co. v. Baum*, 66 Cal. 44, 4 Pac. 916; (*quaere* as to the ruling in this case by which the rate of interest allowed was reduced from 10 per cent. to 9 per cent.); *Santa Cruz etc. Co. v. Spreckles*, 65 Cal. 193, 3 Pac. 661, 802; *Seeley v. Lumber Co.*, 59

4. *Fudickar v. East Riverside Dist.*, 109 Cal. 29, 41 Pac. 1024; *Phillips v. Sanger L. Co.*, 130 Cal. 431, 62 Pac. 749; *Bassett v. Fairchild*, 64 Pac. 1082 (Cal. May 1901).

5. *Id.* Also *Farmers' L. & T. Co. v. San Diego Car Co.*, 45 Fed. 518.

6. *Seeley v. Lumber Co.*, 59 Cal. 22.

Cal. 22; same effect *Davis v. Rock Creek Co.*, 55 Cal. 359.

SECTION 140—SAME—DEALINGS BY DIRECTOR
WITH HIMSELF AS AGENT OF THE COR-
PORATION.

A director, because he is a fiduciary, can have no dealings with himself in regard to the trust property that can be enforced against the corporation.¹ When he acts in a dual capacity—when he is vendor individually and vendee as agent for the corporation, or promisor individually and promisee as agent for the corporation, or vice versa—the law presumes that his personal interest has dwarfed his sense of duty to his principal, and declares that such transactions are, at the election of the corporation, voidable as to it, no matter how honest and upright the director, as a matter of fact, has comported himself. *Smith v. Los Angeles etc. Asso.*, 78 Cal. 289, 20 Pac. 667; *Graves v. Mono Lake Co.*, 81 Cal. 303, 22 Pac. 665; *Tracy v. Colby*, 55 Cal. 67; *Chamberlain v. Pac. Wool etc. Co.*, 54 Cal. 103; *Wilbur v. Lynde*, 49 Cal. 290; *San Diego v. San Diego etc. R. R. Co.*, 44 Cal. 106; *Farmers' L. & T. Co. v. San Diego Car Co.*, 45 Fed. 518; *Sims v. Petaluma Gasl. Co.*, 63 Pac. 1011 (Cal. 1901); *Wickersham v. Crittenden*, 93 Cal. 17, 28 Pac. 788.

It often happens that two corporations

1. *Wickersham v. Crittenden*, 93 Cal. at 29, 28 Pac. 788; *Sims v. Petaluma Gasl. Co.*, 63 Pac. 1011 (Cal. 1901); *Farmers' L. & T. Co. v. San Diego Car Co.*, 45 Fed. 518.

have one or more directors in common. In such a case, as the directors owe the same fidelity to both, there is no presumption that they will deal unfairly with either. [*San Diego etc. Co. v. Pac. Beach Co.*, 112 Cal. 53, 44 Pac. 333.] Therefore the fact of a common directorate does not destroy or paralyze the power of the two corporations to deal with one another. Acts done by such common directors are as valid and binding on both corporations as if the double relationship of the agents did not exist. *Pauly v. Pauly*, 107 Cal 8, 40 Pac. 29; *San Diego etc. Co. v. Pac. Beach Co.*, 112 Cal. 53, 44 Pac. 333.

With reference to railroad corporations and other common carriers, the state constitution [Art. XII, Sec. 18] provides that no director, officer or agent of such corporation shall be directly or indirectly interested in the furnishing of supplies or material to such corporation, nor be interested in the business of transportation as a common carrier over the works owned, leased or controlled by the corporation, except such interest as flows from the ownership of stock in it. It has been held that nothing in this clause forbids a director of such corporation from shipping his freight over its lines. *Bucksport etc. Co. v. Edinburg etc. Co.*, 68 Fed. 972.

SECTION 141—STATUTORY PENALTIES—FOR
MONEY MISAPPROPRIATED.

Few states have adopted as liberal a policy

as California toward corporations and the right to incorporate; and on the other hand few states have visited on the directors for violation of their duties penalties as severe.

The policy of our law to secure right acting by directors has not been to impose financial, moral or educational qualifications on candidates for the office, but to severely penalize wrong acting. It is the same policy which in other states has enacted blue laws. A discussion as to whether such policy is right or wrong does not belong to a work of this kind, but it is suggested that until incompetency also is in some way regulated or penalized, the difficulty, in any given case, of proving wrongful intent will always be a formidable obstacle to the accomplishment of the purpose for which these penalties are imposed, namely, to protect the corporation and the public.

The constitution [Art. XII, Sec. 3] declares that "directors or trustees of corporations and joint stock associations shall be jointly and severally liable to the creditors and stockholders for all moneys embezzled or misappropriated by the officers of such corporation or joint stock association, during the term of office of such director or trustee." This has been supplemented in the Civil Code [C. C. 327] by the provision that any contract or contracts, verbal or written, whereby it is sought, directly or indirectly, to relieve any director or trustee from this constitutional liability is and shall be null and void.

The meaning of this clause of the constitution is not clear. It has been before the Supreme Court only a few times, has never been fully construed by that court and has never been re-enforced by any law of the legislature. In *Fox v. Hale & Norcross S. M. Co.*, 108 Cal. 369, 41 Pac. 308, the court said it relates to directors' liabilities for fraud or embezzlement. "It means something like embezzlement or the misappropriation of funds intrusted to an officer for a particular purpose, and does not apply to the payment of an extravagant price for services or materials properly appertaining to the corporation's business. It does not intend to hold a director liable whether individually culpable or not." *Winchester v. Howard*, 64 Pac. 692, (Cal. April, 1901) was an action under this clause of the constitution to charge the directors of a savings bank for money "misappropriated." The allegations were that the directors made unsecured loans to irresponsible parties. A demurrer to the complaint was sustained, the court saying that "misappropriated" meant "embezzled" in the criminal sense, that the section is penal and that for bona fide acts, no matter how unfortunate or how costly to the corporation such acts prove to be, the directors are not liable. The court expressly refused to decide whether this section of the constitution [Art. XII, Sec. 3] is self-executing or not. *Fox v. Hale & Norcross etc., Co.* (*supra*) is quoted approvingly.

In an earlier case [*Hilder v. Collins*,

63 Cal. 235] it was said to be a cumulative remedy against directors, one that does not take away or abrogate the common law remedy against directors for breach of trust.

In the latest decisions on this subject the court declares that it provides for an action in equity by all of the creditors, or in behalf of all the creditors, and that an action at law by one or some of the creditors will not lie. The liability is said not to be a secondary one and not enforceable only after the legal remedies against the corporation have been exhausted. *Winchester v. Mabury*, 122 Cal. 522, 55 Pac. 393; *Winchester v. Howard*, 64 Pac. 692 (Cal. April, 1901).

SECTION 142—SAME—FOR PROPERTY WRONG- FULLY DIVERTED.

Every director of any stock corporation who concurs in any vote or act of the directors of such corporation or any of them, by which it is intended, either

1. To make any dividend, except from the surplus profits arising from the business of the corporation, and in the cases and manner allowed by law; [see Chap. XIII, *supra*] or

2. To divide, withdraw or in any manner, except as provided by law, pay to the stockholders, or any of them, any part of the capital stock of the corporation [see Chap. VII *supra*, and Sec. 134 *supra*], or

3. To discount or receive any note or other evidence of debt in payment of any installment actually called in and required to be

paid, or with intent to provide the means of making such payment; [see Chap. XI, *supra*], or

4. To receive or discount any note or other evidence of debt, with the intent to enable any stockholder to withdraw any part of the money paid in by him, or his stock; [see Chap. XI, *supra*], or

5. To receive from any other stock corporation, in exchange for the shares, notes, bonds, or other evidences of debt of their own corporation or notes, bonds or other evidences of debt issued by such other corporation; [see Chap. XI, *supra*] is guilty of a misdemeanor. Pen. C. 560.

The statute [C. C. 309] which makes directors individually liable for all debts created in excess of the subscribed capital stock, is penal, because it makes one person liable for the debts of another.¹ It is therefore to be strictly construed. Every intendment is against it, and no recovery can be had without express proof (a) that the debt limit has been exceeded, and (b) that the director sought to be charged was present at the meeting which authorized the debt and did not enter his dissent therefrom on the minutes of the meeting. *Id.*

In railway corporations, every officer, agent, or stockholder who knowingly assents or has any agency in contracting any debt by or in behalf of the company, unauthorized by a

1. *Irvine v. McKeon*, 23 Cal. 472. This case construes a similar provision of the general corporation law of 1850. Stat. 1850, p. 347.

special law for that purpose, the amount of which debt, with other debts of the company, exceeds its available means for the payment of its debts, in its possession, under its control, and belonging to it at the time the debt is contracted, including its bona fide and available stock subscriptions, and exclusive of its real estate, is guilty of a misdemeanor. [Pen. C. 566. See also C. C. 456-7.] But this does not affect as against the corporation the validity of the debt so wrongfully contracted. Pen. C. 567.

SECTION 143—SAME—FOR FALSE RECORDS AND REPORTS, ETC.

The penalty for frauds in inducing subscription to formative stock has already been discussed [Sec. 93 *supra*], likewise the penalty for deceptions practiced on public officers investigating the affairs of the corporation [Sec. 30 *supra*], which penalties are visited on any person who perpetrates the frauds.

In addition, the directors, officer and agents of corporations are subject to the following penalties:

Every director, officer, or agent of any corporation or joint-stock association, who knowingly receives or possesses himself of any property of such corporation or association, otherwise than in payment of a just demand, and who, with intent to defraud, omits to make, or to cause or direct to be made, a full and true entry thereof in the books or accounts of such corporation or association, and every

director, officer, agent, or member of any corporation or joint-stock association who, with intent to defraud, destroys, alters, mutilates, or falsifies any of the books, papers, writings, or securities belonging to such corporation or association, or makes, or concurs in making any false entries, or omits, or concurs in omitting to make any material entry in any book of accounts, or other record or document kept by such corporation or association, is punishable by imprisonment in the state prison not less than three nor more than ten years, or by imprisonment in a county jail not exceeding one year, and a fine not exceeding five hundred dollars, or by both such fine and imprisonment. Pen. C. 563.

Every director, officer, or agent of any corporation or joint-stock association, who knowingly concurs in making, publishing, or posting either generally or privately to the stockholders or other persons, any written report, exhibit, or statement of its affairs or pecuniary condition, or book or notice containing any material statement which is false, or any untrue or wilfully or fraudulently exaggerated report, prospectus, account, statement of operations, values, business, profits, expenditures, or prospects, or any other paper or document intended to produce or give, or having a tendency to produce or give, the shares of stock in such corporation a greater value or a less apparent or market value than they really possess, or refuses to make any book or post any

notice required by law, in the manner required by law, is guilty of a felony. Pen. C. 564.

Any officer of a corporation who wilfully gives a certificate, or wilfully makes an official report, public notice, or entry in any of the records or books of the corporation, concerning the corporation or its business, which is false in any material representation, shall be liable for all damages resulting therefrom to any person injured thereby; and if two or more officers unite or participate in the commission of any of the acts herein designated, they shall be jointly and severally liable. C. C. 316.

Every officer or agent of any corporation, having or keeping an office within this state, who has in his custody or control any book, paper, or document of such corporation, and who refuses to give to a stockholder or member of such corporation, lawfully demanding, during office hours, to inspect or take a copy of the same, or of any part thereof, a reasonable opportunity so to do, is guilty of a misdemeanor. Pen. C. 565.

SECTION 144—SAME—WHAT DIRECTORS ARE LIABLE AND NATURE OF LIABILITY.

The civil liabilities discussed in the preceding sections are liabilities created by law, an action for which must be brought within three years after the discovery by the aggrieved party of the facts upon which the penalty attached or the liability was created. [C. C. 359.] Criminally, the indictment for such as

are misdemeanors must be found within one year after its commission [Pen. C. 801], and for such as are felonies, within three years after its commission, with the usual extension of time when the defendant is out of, or departs from, the state. Pen. C. 800, 802.

The term "director," as used in the statutes creating penal liabilities, embraces any of the persons having by law the direction or management of the affairs of a corporation, by whatever name such persons are described in its charter or known by law. Pen. C. 572. See Secs. 141-3, *supra*.

Every director of a corporation or joint-stock association is deemed to possess such a knowledge of the affairs of his corporation as to enable him to determine whether any act, proceeding, or omission of its directors is a violation of the above duties. Pen. C. 568.

Every director of a corporation or joint-stock association, who is present at a meeting of the directors at which any act, proceeding, or omission of such directors, in violation of this chapter, occurs,¹ is deemed to have concurred therein, unless he at the time causes, or in writing requires, his dissent therefrom to be entered in the minutes of the directors. Pen. C. 569.

Every director of a corporation or joint-stock association, although not present at a meeting of the directors at which any act, proceeding, or omission of such directors, in violation of this chapter¹, occurs, is deemed to

1. Pen. C. 557-572.

have concurred therein, if the facts constituting such violation appear on the records or minutes of the proceedings of the board of directors, and he remains a director of the same company for six months thereafter, and does not within that time cause, or in writing require, his dissent from such illegality to be entered in the minutes of the directors. Pen. C. 570.

It is no defense to a prosecution for a violation of the provisions of this chapter, (Pen. Code 557-572.) that the corporation was one created by the laws of another state, government, or country, if it was one carrying on business or keeping an office therefor within this state. Pen. C. 571.

SECTION 145—ADDITIONAL PENALTIES IN MINING CORPORATIONS.

The statute by which a penalty of one thousand dollars and costs was visited, at suit of any stockholder, upon the directors of mining¹ corporations who fail to have monthly reports and accounts current prepared and posted in the office of the corporation, was a fruitful source of litigation. Stat. 1880, p. 134. See part II, *post*, for act in full.

The constitutionality of the act is undoubted. *Hewlett v. Epstein*, 63 Cal. 184; see Chap. XXIII, *post*.

Revenge and personal spite were so patently

¹ The act applies to all corporations organized for mining purposes, whether actually engaged in mining or not. *Francais v. Samps*, 92 Cal. 503, 28 Pac. 592.

the motif of most of the actions brought to recover this penalty, that in 1897 the legislature added the proviso, that the act should only apply to mining corporations, whose stock is listed and offered for public sale at public exchange, and limited the damages to the actual damages sustained, with costs of suit. Stats. 1897, p. 38.

The statute is remedial as well as penal.¹ That the director did not know of the law is immaterial; likewise it is no defense that the stockholder who sues knew more of the company's affairs than the directors. The statute is for the benefit of all stockholders, and some of them might not have such knowledge.² It is no defense to show that the corporation has no office or principal place of business. The law contemplates that every corporation shall have an office, and it is the directors' duty to maintain one. *Chapman v. Doray*, 89 Cal. 52, 26 Pac. 605; *Hewlett v. Epstein*, 63 Cal. 184.

The act requires of the directors three things:

(a) Full and complete books to be kept by the secretary and open to the stockholders' inspection;

(b) A monthly balance sheet, or an itemized account thereof, to be posted in the office of the corporation;

(c) Reports of the superintendent to be kept in the office and be open to the stock-

1. *Ball v. Tollman*, 119 Cal. 358, 51 Pac. 546; *Anderson v. Byrnes*, 122 Cal. 272, 54 Pac. 821. As amended in 1897, the act is no longer penal. See this section, *post*.

2. *Id.*

holders' inspection. *Eyre v. Harmon*, 92 Cal. 580, 28 Pac. 779.

A balance sheet, containing a summary or balance of all accounts, fulfills the requirements of the statute [*Id.*], provided, it is verified by the superintendent. The act requires verified reports. *Shanklin v. Gray*, 111 Cal. 88, 43 Pac. 399.

The directors are only liable to the penalty for a willful and intentional neglect to have reports made and accounts filed. Impossibilities are not required, and if, in good faith, they require the superintendent to make the verified reports, and require the secretary to post them, they are not liable to the penalty. *Eyre v. Harmon*, 92 Cal. 580, 28 Pac. 399; *Miles v. Woodward*, 115 Cal. 308, 46 Pac. 1076.

For *intentional* failure to comply with the statute, no matter how honestly the directors may be acting, they are liable. *Shanklin v. Gray*, 111 Cal. 88, 43 Pac. 399; *Eyre v. Harmon*, 92 Cal. 580, 28 Pac. 779.

A stockholder makes out a *prima facie* case by proving that the reports were not posted by the first Monday of the month. *Schenck v. Bandman*, 81 Cal. 231, 22 Pac. 654; compare *Hewlett v. Epstein*, 63 Cal. 184.

Under the former wording of the act, each monthly failure is a delinquency for which an action lies. Only one penalty could be recovered for delinquencies that happened prior to the time of bringing suit, no matter how many delinquencies there may have been. But after such judgment recovered, another

action lies for a subsequent failure. *Schofield v. Doray*, 89 Cal. 55, 26 Pac. 606; *Shanklin v. Gray*, 111 Cal. 88, 43 Pac. 399; *Loveland v. Garner*, 71 Cal. 541, 12 Pac. 616.

Under the present wording of the act, authorizing a judgment for actual damage only, the penal feature of the statute has been eliminated. The present act applies to all corporations, domestic and foreign. *Johnson v. Tanthans*, 127 Cal. 605, 60 Pac. 172.

Before the amendment of 1897, the act related only to domestic corporations. *Miles v. Woodward*, 115 Cal. 308, 46 Pac. 1076.

The original statute was so far penal, that a repeal of the act after action brought, but before judgment, put an end to the cause of action. *Anderson v. Byrnes*, 122 Cal. 272, 54 Pac. 821.

SECTION 146—MEETINGS—NECESSITY OF.

The grant of corporate powers is to the board of directors, not to the directors individually. [C. C. 305, Sec. 133 *supra*.] The powers thus granted can only be exercised at a meeting of the board duly called and assembled. C. C. 308; *Curtin v. Salmon R. etc. Co.*, 130 Cal. 345, 62 Pac. 552.

When a meeting of the board is not called in the manner prescribed by law, it has no power to bind the corporation and its acts are not corporate acts. *Gashwiler v. Willis*, 33 Cal. 11; *Miner's Ditch Co v. Zellerbach*, 37 Cal. 543; *Thompson v. Williams*, 76 Cal. 153, 18 Pac. 153; *Alta S. Min. Co. v. Alta Placer*

Mining Co., 78 Cal. 629, 21 Pac. 373; San Buenaventura etc. Co. *v.* Vassault, 50 Cal. 534; Smith *v.* Dorn, 96 Cal. 73, 30 Pac. 1024; Pauly *v.* Pauly, 107 Cal. 8, 40 Pac. 29; Curtin *v.* Salmon R. etc. Co., 130 Cal. 345, 62 Pac. 552.

A majority of the directors is a sufficient number to form a board for the transaction of business and every decision of a majority of the directors forming such board, made when duly assembled, is valid as a corporate act. [C. C. 308.] Unless a quorum (*i. e.* majority of the whole number of directors that the corporation is authorized by its charter to have) is present and acting¹ no business performed or act done is valid as against the corporation. [C. C. 305; Harding *v.* Vandewater, 40 Cal. 77.] The fact that there is a vacancy in the board is immaterial, the remaining directors, if a majority of the whole authorized number can perform corporate acts. [Porter *v.* Lassen County etc. Co., 127 Cal. 261, 59 Pac. 563.] Unless the by-laws of the corporation otherwise provide, it is the right and duty of the board to fill vacancies, by appointment. [C. C. 305.] When, by vacancies, only a minority of the directors remain, such minority has power to fill up the board. This is the only valid corporate act a minority can do. Nellis *v.* Pac. Bank, 127 Cal. 166, 59 Pac. 830.

¹ See section 159, *supra*, that interested directors are not present and acting as to acts in which they have a pecuniary interest. See also Curtin *v.* Salmon R. etc. Co., 130 Cal. 345, 62 Pac. 552.

SECTION 147—TIME, PLACE AND NOTICE OF MEETING.

The meetings of the board of directors must be held at the office or principal place of business of the corporation. [C. C. 319.] It is competent for the corporation to provide by by-law for regular meetings and the mode of calling special meetings. [C. C. 320, 303 sub. 1.] But when that is not done, all meetings—regular or special—[*Thompson v. Williams*, 76 Cal. 153, 18 Pac. 153] must be called by special notice in writing, to be given to each director by the secretary, on the order of the president, or if there be none, on the order of two directors. [C. C. 320.] If there be a president, he only can call a special meeting, and his refusal, no matter what the circumstances, does not authorize a director to make the call. The Supreme Court has not yet signified what the remedy is, for a refusal of the president to call a meeting. *Smith v. Dorn*, 96 Cal. 73, 30 Pac. 1034.

The notice required is a personal notice to each member of the board. [*Harding v. Vandewater*, 40 Cal. 77.] If such notice is sent through the mail properly stamped and addressed, there is a presumption that such notice was received. [Sec. 121, *supra*.] It must state the time and place of meeting, but need not state the object of the meeting. *Granger v. Empire Mg. Co.*, 59 Cal. 678.

In stating the time, both day and hour are required, and the meeting must be set for such time as is at least reasonably sufficient to

afford the directors the opportunity to be present. *Thompson v. Williams*, 76 Cal. 153, 18 Pac. 153; *San Buenaventura etc. Co. v. Vassault etc. Co.*, 50 Cal. 534; see also Sec. 121, *supra*.

Meetings duly assembled can be adjourned from day to day or time to time, but the resolution of adjournment must state the hour of day to which the meeting is adjourned. Otherwise, the adjourned meeting is not duly assembled and its acts are void. *Thompson v. Williams*, 76 Cal. 153, 18 Pac. 153. *Bank of Nat. City v. Johnson*, 65 Pac. 383, (Cal. June, 1901.)

SECTION 148—BY-LAWS—NATURE OF.

By-laws are the body of rules laid down by a corporation for the government of its officers and stockholders in the conduct of its affairs. [*Wells v. Block*, 117 Cal. 157, 48 Pac. 1090.] They constitute a contract between the corporation and each individual stockholder and cannot be amended, altered or repealed so as to impair vested rights, except they contain an express provision for such alteration or repeal. They cannot operate retroactively. [*Stohr v. San Francisco etc. Society*, 82 Cal. 557, 22 Pac. 1125; *People v. Crockett*, 9 Cal. 112.] Every stockholder is bound by by-laws regularly and duly adopted, whether he has signed them or not. [*McFadden v. County of L. A.*, 74 Cal. 571, 16 Pac. 397.] Third parties, dealing with a corporation are not bound by a by-law, unless they have act-

ual knowledge of it. [*Underhill v. Santa Barbara Co.*, 93 Cal. 300, 28 Pac. 1049.] Where a third party has such knowledge, the stockholders by ratifying a corporate act which constituted a breach of the by-laws, may waive such breach. *Underhill v. Santa Barbara Co.*, 93 Cal. 300, 28 Pac. 1049; *Pixley v. West. Pac. R. R. Co.*, 33 Cal. 183.

In addition to the express provision of the code that by-laws must not be in controvention of any existing law [C. C. 354], by-laws must be reasonable and just and not in controvention of public policy, or oppressive to the stockholders or persons dealing with the corporation. In *re Collateral L. & S. Bank*, 5 Sawyer 331.

SECTION 149—SAME—ADOPTION, ALTERATION AND REPEAL.

The general law of the state provides [C. C. 301] that every corporation may adopt a code of by-laws for its government, not inconsistent with the constitution and laws of the state. The assent of stockholders representing a majority of all the subscribed capital stock, or of a majority of the members, if there is no capital stock, is necessary to adopt by-laws, if they are adopted at a meeting called for that purpose, and in the event of such meeting being called, two weeks' notice of the same by advertisement in some newspaper published in the county in which the principal place of business of the corporation is located, or if none is published therein, then

in a paper published in an adjoining county, must be given by order of the acting president. The written assent of the holders of two-thirds of the stock, or of two-thirds of the members, if there is no capital stock, is effectual to adopt a code of by-laws without a meeting for that purpose. C. C. 301.

"All by-laws adopted must be certified by a majority of the directors and secretary of the corporation, and copied in a legible hand in some book to be kept in the office of the corporation, to be known as the 'book of by-laws,' and the book must then be open to the inspection of the public during office hours each day except holidays. The by-laws may be repealed or amended, or new by-laws may be adopted, at the annual meeting, or at any other meeting of the stockholders or members called for that purpose by the directors, by a vote representing two-thirds of the subscribed stock, or by two-thirds of the members. The written assent of the holders of two-thirds of the stock, or of two-thirds of the members if there is no capital stock, is effectual to repeal or amend any by-law, or to adopt additional by-laws. The power to repeal and amend the by-laws and to adopt new by-laws may, by a similar vote at any such meeting, or similar written assent, be delegated to the board of directors. The power, when delegated, may be revoked by a similar vote at any regular meeting of the stockholders or members. Whenever any amendment or new by-law is adopted, it must be copied in the book of by-

laws, and immediately after them. If any by-law is repealed, the fact of repeal, with the date of the meeting at which the repeal was enacted, or written assent was filed, must be stated in said book." C. C. 304.

Until copied or stated as above required, no by-law nor any amendment or repeal thereof can be enforced against any person, other than the corporation, not having actual notice thereof. C. C. 304.

SECTION 150—SUBJECT-MATTER OF BY-LAWS.

For the management of its property, the regulation of its affairs and for the transfer of its stock, a California corporation has power to make by-laws [C. C. 354, sub. 6], subject only to the restrictions discussed in the preceding section. [Sec. 149, *supra*.] In addition to this general grant of power, the Civil Code makes special mention of numerous matters that can be regulated by by-law, if the stockholders see fit so to do.

A corporation may, by its by-laws, provide for:

1. The time, place and manner of calling and conducting its meetings, and may dispense with notice of all regular meetings of stockholders or directors. C. C. 303.

2. The number of stockholders or members constituting a quorum. C. C. 303.

3. The mode of voting by proxy. C. C. 303.

4. The qualification and duties of directors,

and also the time of their annual election, and the mode and manner of giving notice thereof. C. C. 303.

5. The mode, manner, and by whom, vacancies in the board of directors are to be filled. C. C. 305.

6. The amount of stock which must be held in order to qualify the holder to become a candidate for the office of director. C. C. 305.

7. The compensation and duties of officers. C. C. 303.

8. The manner of election and the terms of office of all officers other than the directors. C. C. 303..

9. The restrictions under which and purposes for which, certificates of stock, signed by the president and secretary, may be issued prior to the full payment for such stock. C. C. 323.

10. For the disposition of such of its own stock, as is purchased by the corporation. C. C. 344.

11. The newspaper in which all notices of the meetings of stockholders or board of directors, notice of which is required, must be published, which must be some paper published in the county where the principal place of business of the corporation is located, or if none is published therein, then in a newspaper published in an adjoining county; *provided*, that when the by-laws prescribe the newspaper in which said publication shall be made, if from any cause, at the time any pub-

lication is desired to be made, the publication of such newspaper shall have ceased, the board of directors may, by an order entered on the records of the corporation, direct the publication to be made in some other newspaper published in the county, or if none is published therein, then in an adjoining county. C. C. 303.

12. Suitable penalties for violation of by-laws, not exceeding in any case, one hundred dollars for any one offense. C. C. 303.

Corporations now organized, or that may hereafter be organized for purposes *other than profit*, may, either in their by-laws, ordinances, constitutions, or articles of incorporation, provide for:

1. The qualification of members, mode of election or appointment, and terms of admission to membership;

2. The fees of admission and dues to be paid to their treasury by members;

3. The number of persons that shall constitute a quorum at any meeting of the corporation, and that an election of officers of the corporation by a meeting so constituted, or the appointment or selection of such officers, or any of them, in any manner required by the rules, regulations, or discipline of any specified religious denomination, society, or church, shall be as valid as if made at an election at which a majority of the members of the corporation were present and voted;

4. The expulsion and suspension of mem-

bers for misconduct or nonpayment of dues, also for restoration to membership;

5. A special method of organizing the board of directors, and a special method of increasing or diminishing the number of directors within the limits as to number prescribed by section five hundred and ninety-three of this code;

6. Contracting, securing, paying, and limiting the amount of their indebtedness;

7. That the rules, regulations, or discipline for the time being, of any specified religious denomination, society, or church, shall always be a part of their by-laws, ordinances, constitutions, or articles of incorporation;

8. Other regulations not repugnant to the constitution or laws of the state and consonant with the objects of the corporation.

C. C. 599.

SECTION 151—JUDICIAL CONSTRUCTION OF CERTAIN BY-LAWS.

The following by-laws have been judicially declared valid, as not being in conflict with any existing law:

A by-law that stock shall not be transferred on the books of the corporation until all delinquent assessments thereon have been paid and that all certificates should contain this by-law on their face;¹ a by-law that in the event of insolvency or dissolution creditors who are not stockholders shall have a

¹ *Borland v. Haven*, 37 Fed. 394, affirmed without opinion, 15 Sup. Ct. 1039; *Pendergast v. Bank of Stockton*, 2 Sawy. 108.

preference over creditors who are,¹ and a by-law of a mutual benevolent society that members may be expelled for cause. *Peyre v. Mut. R. Soc.*, 90 Cal. 240, 27 Pac. 191.

On the other hand, a by-law of a building and loan society that the corporation, on demand, will return subscriptions paid and cancel stock;² a by-law attempting to establish a secret lien on stock in favor of the corporation and available against innocent purchasers;³ a by-law that only a stockholder can be selected as the proxy of another;⁴ and a by-law that stockholders shall not be liable for the debts of the corporation⁵—have all been declared null and void, as contravening the existing law of the state.

SECTION 152—ELECTION OF DIRECTORS—TIME AND METHOD.

The directors of a corporation must be elected annually by the stockholders or members, and if no provision is made in the by-laws for the time of election it must be held on the first Tuesday in June. [C. C. 302.] Two weeks' notice of such election must be given by order of the acting presi-

1 See Sec. 85, *supra*. *Murphy v. Pac. Bank*, 130 Cal. 542, 62 Pac. 1059; *Anglo Bank v. Granger's Bank*, 63 Cal. 359.

2 *Verconture v. Golden State L. Co.*, 116 Cal. 410, 48 Pac. 373.

3 *Anglo Bank v. Granger's Bank*, 63 Cal. 359; *Lankershim Co. v. Herberger*, 82 Cal. 600, 23 Pac. 134.

4 *People's etc. Bank v. Superior Court*, 104 Cal. 649, 38 Pac. 452.

5 *Wells v. Black*, 117 Cal. 157, 48 Pac. 1090.

dent¹ by advertisement in some newspaper published in the county of the principal place of business of the corporation; and if there be none published in such county, then in a newspaper of an adjoining county. [C. C. 302.] The power of electing directors is thus placed by the general law in the stockholders to be exercised by them at a meeting duly called and assembled [Sec. 121, *supra*], and the corporation cannot by resolution, by-law or contract, directly or indirectly, either give or take away this power. *Brewster v. Hartley*, 37 Cal. 15.

All elections must be by ballot, and every stockholder has the right to vote [Chap. XIV, *supra*,] in person or by proxy the shares standing in his name for as many persons as there are directors to be elected, or to cumulate his vote.² The directors receiving the highest number of votes shall be declared elected. C. C. 307.

At all elections there must be a majority of the subscribed capital stock, or of the members, represented in person or by proxy in writing. C. C. 312.

If from any cause an election does not take place on the day appointed by law or by the by-laws, or otherwise, it may be held on any day thereafter as is provided for in such by-laws, or to which such election may be

¹ If there be none such, a justice of the peace can call the meeting on application of three or more stockholders, or of a lesser number holding a majority of the shares. C. C. 311. See Sec. 122, *supra*.

² C. C. 307. Cumulative voting does not apply to corporations not for profit. See Chap. XIV, *supra*.

adjourned or ordered by the directors. If an election has not been held at the appointed time, and no adjourned or other meeting for the purpose has been ordered by the directors, a meeting may be called by the stockholders. C. C. 314. For the notice of and mode of calling the meeting, see C. C. 310, and section 122, *supra*.

There must be not less than five directors, [C. C. 290] a majority of whom must be citizens of California. [C. C. 305.] The number of directors may be increased or decreased to any number not less than five,¹ whereupon a certificate stating the number of directors must be filed in the manner provided for filing original articles of incorporation. C. C. 290; see Chap. III, *supra*.

Directors in corporations for profit must be holders of stock therein to an amount to be fixed by the by-laws. [C. C. 305.] A person holding no stock in the corporation cannot be legally elected a director. *Rosecrans Mfg Co. v. Morey*, 111 Cal. 114, 43 Pac. 585.

Directors of all other corporations must be members thereof. C. C. 305.

The question of filling vacancies in the board has already been discussed. See Sec. 146 *supra*.

SECTION 153—SAME—CONTESTING ELECTIONS.

As elections can only be had at meetings of the stockholders duly called and assembled, an election can be contested like any other act of the stockholders, on the ground that the

1. This does not relate to corporations for social purposes; such corporations can have any number they desire. C. C. 305.

meeting at which it was held was not legally assembled. Such an election is void, not voidable, for an illegal meeting can do no valid corporate act. [Zion M. E. Church v. Hillary, 51 Cal. 155, see Sec. 146 *supra*.] If, however, the meeting be duly assembled, but no quorum be present, or votes are improperly cast or counted such election is voidable, not void. [C. C. 312.] It can be set aside on the application of any stockholder whether he had the right to vote at such election or not. Wright v. Central etc. W. Co., 67 Cal. 532, 8 Pac. 70.

The action to set aside an election is an equitable one [Whitehead v. Sweet, 126 Cal. 67, 58 Pac. 376], and can be brought in any equity court; it was a right at common law to any one aggrieved. Wright v. Central etc. W. Co., 67 Cal. 532, 8 Pac. 70.

The remedy is to be sought through the courts. Members of a corporation cannot secede for the purpose of expelling its officers or declaring its offices vacant and electing new officers. Such proceedings are wholly void. [McCallion v. Hibernia etc. Soc., 70 Cal. 163, 12 Pac. 114.] The Civil Code, section 315, provides that "upon the application of any person aggrieved by any election held by any corporate body, the Superior Court of the county in which such election is held must proceed forthwith to hear the allegations and proofs of the parties, or otherwise inquire into the matters of complaint, and thereupon confirm the election, order a new one, or direct such other relief in the premises as accords with right

and justice. Upon filing the petition, and before any further proceedings are had under this section, five days' notice of the hearing must be given, under the direction of the court or the judge thereof; to the adverse party, or those to be affected thereby." All relief necessary can be granted in this action. *Whitehead v. Sweet*, 126 Cal. 67, 508 Pac. 376.

This section of the code applies only to the annual election of directors by the stockholders; it does not apply to appointments to fill vacancies. [*Wickersham v. Brittan*, 93 Cal. 34, 29 Pac. 51.] The only "elections" which the "corporate body" holds are those at which only the stockholders vote. The corporate body is the corporation itself, not the board of directors. It is "the persons signing the articles of incorporation, their associates and successors," who are erected into a "body politic and corporate." [Sec. 296 C. C.; *Wickersham v. Brittan*, 93 Cal. 34, 29 Pac. 51; see Chap. III, *supra*.] Accordingly, this section does not apply to a refusal of the other directors to allow an appointed director to act as such. *Wickersham v. Murphy*, 93 Cal. 41, 28 Pac. 793.

SECTION 154—REMOVAL OF DIRECTORS.

The board of directors legally elected can only be removed from office by a vote of two-thirds of the members, or of stockholders holding two-thirds of the capital stock, at a general meeting held after previous notice of the time and place and of the intention to pro-

pose such removal. [C. C. 310.] Meetings of stockholders for this purpose may be called by the president, or by a majority of the directors, or by members or stockholders holding at least one-half the votes. Such calls must be in writing and addressed to the secretary, who must thereupon give notice of the time, place and object of the meeting, and by whose order it is called. If the secretary refuses to give the notice, or if there is none, the call may be addressed directly to the members or stockholders, and be served as a notice, in which case it must specify the time and place of meeting.¹ In case the board of directors is so removed, a new board may be elected at the same meeting. C. C. 310.

There is no power in the courts of this state, as courts of equity, to remove directors or any other officers of a corporation. A director may fraudently mismanage the affairs of the corporation and be liable for his acts, but he cannot on that account be removed from office by a court.² It will be noted that the above section [Sec. 310 C. C.] refers only to the removal of the *whole board* of directors, and that the *board* can be removed at pleasure of the stockholders, with or without cause. The section does not apply to other officers of a corporation, nor to such of its agents as are removable or appointable at pleasure of the directors.

1. C. C. 310. The notice must be given as prescribed in section 301 C. C., which section is given in full in Part II, *post*.

2. Neall v. Hill, 16 Cal. 146. An exception to this rule is made in the case of savings banks, Sec. 678 C. C.

If a director while in office disposes of all his stock so that he is no longer a shareholder, such act does not ipso facto oust him from office. *San Jose Bank v. Sierra L. Co.*, 62 Cal. 179.

A contract by a director to resign his office is against public policy and cannot be enforced. "Directors owe duties to others besides themselves. They have been put in office by the stockholders and it is a violation of trust to be bought out. They can resign, of course, but they must not make a profit or benefit out of the matter of such resignation. Such a consideration is illegal." *Forbes v. McDonald*, 54 Cal. 98.

In mining corporations organized and still existing under the act of March 21, 1872 [Stats. p. 443; amended Stats. 1875-6, p. 730], the proceedings to oust directors are to be brought by a majority of the shareholders, not by the holders of a majority of the stock. *Chollar M. Co. v. Wilson*, 66 Cal. 374, 5 Pac. 670.

SECTION 155—DE FACTO DIRECTORS.

Directors holding office under color of election and having charge of the affairs of the corporation are "de facto" directors. [*Anglo Cal. Bank v. Mahoney etc. Co.*, 5 Sawyer 255.] Two conditions are necessary in order to constitute directors de facto: (a) There must have been an honest attempt made to hold a legal election and (b) the persons so defectively elected must have been acting in the capacity of directors. For a similar doctrine

as to de facto corporations see chapter XXII, *post*.

Acting in the capacity of a director means taking part, as such, in the affairs of the corporation, holding himself out as such, and, in general, performing the duties of a director. [Rosecrans M. Co. *v.* Morey, 111 Cal. 114, 43 Pac. 585.] If a person's only act as a director is to take forcible possession of the corporation's offices or property, such person is not a de facto director, but a trespasser. *Zion M. E. Church v. Hillary*, 51 Cal. 151.

De facto directors have all the powers and liabilities of directors legally elected.¹ Their acts are valid corporate acts.² They can levy assessments,³ or sell the corporate property⁴, and their title to office cannot be attacked in any collateral proceeding.⁵ Until ousted by a direct proceeding, the title to office of a de facto director, cannot be impeached. *San Jose etc. Bank v. Sierra L. Co.*, 63 Cal. 179.

This "de facto" doctrine is for the benefit of innocent third parties and should not be invoked when all the parties to the action have full knowledge of the circumstances of

1 *Anglo Cal. Bank v. Mahoney etc. Co.*, 5 Sawy. 255.

2 *Mahoney etc. Co. v. Bennett*, 5 Sawy. 141.

3 *San Joaquin Co. v. Beecher*, 101 Cal. 70, 35 Pac. 349.

4 *Balfour Guthrie etc. Co. v. Woodworth*, 124 Cal. 169, 56 Pac. 891.

5 *San Joaquin Co. v. Beecher*, 101 Cal. 70, 35 Pac. 341; *San Jose etc. Bank v. Sierra L. Co.*, 63 Cal. 179; *Balfour Guthrie etc. Co. v. Woodworth*, 124 Cal. 169, 56 Pac. 891; *Barrell v. Lake View Land Co.*, 122 Cal. 129, 54 Pac. 594.

the election, as for example in a contest between the corporation and its officers. See *Rosecrans v. Morey*, 111 Cal. 114, 43 Pac. 585. See chapter III, *supra*.

CHAPTER XVII.

OTHER OFFICERS AND AGENTS.

SEC. 156—ELECTION OF OFFICERS AND APPOINTMENT OF AGENTS.

SEC. 157—POWER TO BIND THE CORPORATION.

SEC. 158—ADMISSIONS.

SEC. 159—UNAUTHORIZED ACTS.

SEC. 160—SAME—RATIFICATION.

SEC. 161—LIABILITIES.

SEC. 162—SAME—PENAL.

SEC. 163—SALARIES OF OFFICERS.

SEC. 164—SAME—OF DIRECTORS.

SECTION 156—ELECTION OF OFFICERS AND APPOINTMENT OF AGENTS.

Immediately after their election, the directors must organize by the election of a president, who must be one of their number, a secretary, and treasurer. They must perform the duties enjoined on them by law and the by-laws of the corporation. C. C. 308.

All other officers and agents are appointees of the board of directors. In order to appoint an officer or agent, no written or sealed commission is necessary [McKiernan v. Lenzen, 56 Cal. 61]; an agency may be created by a precedent authorization or a subsequent ratification. [C. C. 2307.]

Until an officer resigns, or is removed, or his office is declared vacant, he remains

an officer, and his acts are binding on the corporation if within the scope of his authority. [Eel R. N. Co. v. Struven, 41 Cal. 616.] A summons served on a president who had departed from the home county of the corporation and settled two hundred miles away and who had long ceased to take any active part in the corporation's business or affairs was held to be a valid service on the corporation though in fact none of its managers or other agents ever knew of the service. *Id.*

A contract by a director to vote for the election of a certain person cannot be enforced. It is against public policy to allow a director to obligate himself to vote in any certain way. Dulin v. Pac. Wood etc. Co., 103 Cal. 357., 35 Pac. 1045, 37 Pac. 207.

SECTION 157—POWER TO BIND THE CORPORATION.

Officers of a corporation are its agents, and their power to bind it is simply a question of agency. San Diego W. Co. v. San Diego F. Co., 108 Cal. 549, 41 Pac. 495; Carey v. Philadelphia etc. Co., 33 Cal. 694.

The Civil Code states [Sec. 2307] that authority can be conferred on an agent by precedent authorization or a subsequent ratification, and that "an agent has authority to do everything necessary or proper or usual in the ordinary course of business for effecting the purpose of his agency." [C. C. 2319.] The authority of an agent of a corporation depends on the character and necessities of its

business and the degree or extent of control permitted him by the corporation. [*Rigby v. Lowe*, 125 Cal. 613, 58 Pac. 153.] Accordingly, an officer of a corporation has power to bind the corporation as its agent by contracts or other acts made within the ordinary business of his office. [*Crowley v. Genesee M. Co.*, 55 Cal. 273.] Proof of his appointment to office is sufficient proof of such authority; neither a seal nor a resolution of the directors is necessary. *Crowley v. Genesee M. Co.*, 55 Cal. 273; *Greig v. Riordan*, 99 Cal. 316, 33 Pac. 913.

Special authority, not belonging to an officer by virtue of his office, can only be conferred on him by by-law [C. C. 303], or by resolution of the directors. It is usual in most corporations to appoint some officer general manager, whose powers and duties are to assume complete control of the ordinary workings of the business. [*Greig v. Riordan*, 99 Cal. 316, 33 Pac. 913.] Such a general manager has power to do any act which in his judgment is suitable to protect the interests of the corporation or to preserve its property.¹ He can borrow money and incur debts and issue the paper of the corporation therefor,² and he can collect all debts due the corporation.³ He can pay or secure the cred-

1. *Los Angeles L. Co. v. Los Angeles*, 106 Cal. 156, 39 Pac. 535; *Hawley v. Gray Bros. Co.*, 106 Cal. 337, 39 Pac. 609.

2. *Smith v. Eureka Flour Mills*, 6 Cal. 1; *Seeley v. Lumber Co.*, 59 Cal. 22; *McCormick v. Stockton etc. R. R. Co.*, 130 Cal. 100, 62 Pac. 267; *Siebs v. Joshua Hendy Works*, 86 Cal. 390, 25 Pac. 14.

3. *Greig v. Riordan*, 99 Cal. 316, 33 Pac. 913; assignment for collection, *Rigby v. Lowe*, 125 Cal. 613, 58 Pac. 153; *Tuller v. Arnold*, 98 Cal. 522, 33 Pac. 425.

itors of the corporation and for that purpose can assign its bills receivable.⁴ He can make assignments for the purpose of collection. [Tuller v. Arnold, 98 Cal. 522, 33 Pac. 445.] He can hire an attorney. [Streeter v. Robinson, 102 Cal. 542, 36 Pac. 946.] He can hire laborers and employ clerks,⁵ and can purchase all needed materials and supplies.⁶ He can sell or lease the property of the corporation.⁷ But all these powers can only be exercised if in the scope of the ordinary business of the corporation. He cannot contract or purchase property for the purpose of extending the operations of the corporation. *Blen v. Bear River Co.*, 20 Cal. 602.

No officer of a corporation by virtue of his office alone, whether president, vice-president, secretary or treasurer, has power to hire an attorney for the corporation,⁸ or make a street paving contract,⁹ or hire a doctor for an injured employee,¹⁰ or pool or consolidate with another corporation,¹¹ or to issue bonds,¹² or to buy or sell real estate,¹³ or to mortgage the

4. *McKiernan v. Lenzen*, 56 Cal. 61; *Hoyt v. Selby Smelting Co.*, 90 Cal. 339, 27 Pac. 288.

5. *Crowley v. Genesee M. Co.*, 55 Cal. 273; *Hudepohl v. Liberty Hill etc. Co.*, 80 Cal. 553, 22 Pac. 339; *Bee v. S. F. & N. P. R. R. Co.*, 46 Cal. at 249.

6. *Siebe v. Joshua Hendy Works*, 86 Cal. 390, 25 Pac. 14.

7. *Hawley v. Gray Bros. Co.*, 106 Cal. 337, 39 Pac. 609; *Bates v. Coronado Beach Co.*, 109 Cal. 160, 41 Pac. 855.

8. *Pac. Bank v. Stone*, 121 Cal. 202, 53 Pac. 634.

9. *Thomasson v. M. E. Church*, 113 Cal. 558, 45 Pac. 838.

10. *Fraser v. S. F. Bridge Co.*, 103 Cal. 79, 36 Pac. 1037.

11. *Fontana v. Pacific Can Co.*, 129 Cal. 51, 61 Pac. 580.

12. *Farmers' L. & T. Co. v. San Diego Car Co.*, 45 Fed. 518.

13. *Bliss v. Kaweah etc. Co.*, 65 Cal. 502, 4 Pac. 507.

property of the corporation,¹⁴ or to secure creditors.¹⁵

When agents of a corporation do acts not within the scope of its ordinary business or of their usual duties, there is no presumption that their acts are corporate acts. *Mulligan v. Smith*, 59 Cal. 206.

The president of a bank has no power to withdraw or remove its funds or property or use them in any way; the cashier is the executive officer. *Underhill v. Santa Barbara Co.*, 93 Cal. 300, 28 Pac. 1049.

Whenever an authority is given to any officer or agent by resolution of the board of directors, the corporation is estopped to deny such authority. [*Barrell v. Lake View Land Co.*, 122 Cal. 129, 54 Pac. 594.] The affixing of the corporate seal by the proper officers is *prima facie* evidence that those officers had power to make the instrument. *So. Cal. etc. Asso. v. Bustamente*, 52 Cal. 192; *Crescent City etc. Co. v. Simpson*, 77 Cal. 286, 19 Pac. 426; *Mills v. Boyle Min. Co.*, 64 Pac. 122 (Cal. 1901); *Vaca Valley etc. R. R. Co. v. Mansfield*, 84 Cal. 560, 24 Pac. 145; *Barrell v. Lake View L. Co.*, 122 Cal. 129, 54 Pac. 594; see also Chap. VII, *supra*.

SECTION 158—ADMISSIONS.

A declaration or admission made by an officer or agent of a corporation within the scope of his duties is binding on the corpo-

14. *Alta S. Mining Co. v. Alta Placer M. Co.*, 78 Cal. 629, 21 Pac. 373.

15. *Blood v. Marcuse*, 38 Cal. 590.

ration,¹ but if not made when acting within the extent of his agency, it is his private act and the corporation is not bound. *Walrath v. Champion M. Co.*, 171 U. S. 293; 18 Sup. Ct. Rep. 909.

Notice to an agent of the corporation of acts or facts within the scope of his duties is notice to the corporation. *Jefferson v. Hewitt*, 103 Cal. 624, 37 Pac. 638; *Lord v. G. N. & P. S. S. Co.*, 4 Sawyer 292.

SECTION 159—UNAUTHORIZED ACTS.

Contracts or conveyances made by officers or agents outside their powers or authority are absolutely void; such acts are not corporate acts.² Unauthorized conditions or covenants in a mortgage or deed make the instrument void.³ Where a president contracts without disclosing his agency, and the other party deals with him as a principal, the president is personally liable, like any agent of a natural person. *Bradford v. Woodworth*, 108 Cal. 684, 41 Pac. 797.

One who has received the benefit of a contract entered into with the president of a corporation and which the corporation has performed, is estopped to assert the president's want of authority. *Oakland Paving Co. v. Rier*, 52 Cal. 270.

1. *Balfour v. Fresno etc. Co.*, 123 Cal. 395, 55 Pac. 1062; *Green v. Ophir etc. Co.*, 45 Cal. 522; *Abbott v. '76 Land Co.*, 87 Cal. 323, 25 Pac. 693; C. C. 2319.

2. *Fudickar v. East Riverside Dist.*, 109 Cal. 29, 41 Pac. 1024; *Findla v. San Francisco*, 13 Cal. 534; *Alta S. Min. Co. v. Alta Placer etc. Co.*, 78 Cal. 629, 21 Pac. 373; *Mulligan v. Smith*, 59 Cal. 206.

3. *Gribble v. Columbus Brewing Co.*, 100 Cal. 67, 34 Pac. 527.

SECTION 160—SAME—RATIFICATION.

Wherever power to do the acts done could be precedently delegated to an officer or agent by the board of directors or by the stockholders, such acts can be subsequently ratified by the directors or stockholders, as the case may be.⁴ What ratification is, has been already considered.⁵ By accepting the benefits of unauthorized acts of its officers,⁶ corporations can be estopped to deny the want of authority of such officers.⁷ An estoppel also arises in cases where the officer has been held out by the corporation as having authority to act. *Gribble v. Columbus Brewing Co.*, 100 Cal. 67, 34 Pac. 527; *Swinnerton v. Argonaut etc. Co.*, 112 Cal. 375, 44 Pac. 719.

SECTION 161—LIABILITIES.

Officers and agents of a corporation are fiduciaries and liable to it for all breaches of their trust. There is jurisdiction in all courts of equity to compel such agents to account, and to make good to the corporation all damage, or loss or profits, diverted, by reason of their wrongful acts. *Neall v. Hill*, 16 Cal. 146; *S. F. W. Co. v. Pattee*, 86 Cal. 623, 25 Pac. 135; *San Pedro etc. Co. v. Reynolds*, 121 Cal. 74, 53 Pac. 410.

4. Sec. 2307 C. C.; *Bates v. Coronado Beach Co.*, 109 Cal. 160, 41 Pac. 855; *Mills v. Boyle Min. Co.*, 64 Pac. 122 (Cal. 1901); *Blen v. Bear R. Co.*, 70 Cal. 602.

5. *Gribble v. Columbus Brewing Co.*, 100 Cal. 67, 34 Pac. 527; see Chap. VII, Sec. 56 et seq., *supra*.

6. See *Thomasson v. M. E. Church*, 113 Cal. 558, 45 Pac. 838.

7. *Allen v. Citizens' Co.*, 22 Cal. 28; *S. F. Gas Co. v. San Francisco*, 9 Cal. 453. For the converse see *Oakland Paving Co. v. Rier*, 52 Cal. 270.

Where, in violation of his trust, a manager or superintendent disposes of corporate property to an innocent third party, such party gets an indefeasible title, but the manager or superintendent must account to, and reimburse the corporation for his wrongful act. *San Francisco W. Co. v. Pattee*, 86 Cal. 623, 25 Pac. 135.

"Any officer of a corporation who wilfully gives a certificate, or wilfully makes an official report, public notice, or entry in any of the record or books of the corporation, concerning the corporation or its business, which is false in any material representation, shall be liable for all damages resulting therefrom to any person injured thereby; and if two or more officers unite or participate in the commission of any of the acts herein designated, they shall be jointly and severally liable." C. C. 316.

For all losses or damages caused to the corporation by the negligence or embezzlement of an officer, he is personally liable to the corporation, as are also the sureties, if any, on his bond. Where an officer is elected for a definite term, the bond of his sureties is presumed to cover only such period. [*Fresno Enterprise Co. v. Allen*, 67 Cal. 505, 8 Pac. 59.] The charter and the by-laws of the corporation are part of the contract that an officer and his sureties make with the corporation when he takes office.¹ [*Id*; *Humbolt etc. So-*

1. The same is true of any employee. *San Pedro etc. Co. v. Reynolds*, 121 Cal. 74, 53 Pac. 410.

ciety *v.* Wennerhold, 81 Cal. 528, 22 Pac. 920; San Pedro etc. Co. *v.* Reynolds, 121 Cal. 74, 53 Pac. 410.] A cashier of a bank, who makes unsecured loans and falsely enters them on the books as secured, is liable to the corporation for any loss sustained therefrom; his sureties are also liable. San Joquin Valley Bank *v.* Bours, 65 Cal. 247, 3 Pac. 864.

A secretary who allows money to accumulate in his office for an unusual length of time before turning it over to the treasurer, is liable to the corporation if the money is taken by burglars. Odd Fellows' Association *v.* James, 63 Cal. 598.

SECTION 162—SAME—PENAL.

"Every officer, agent, or clerk of any corporation, or any persons proposing to organize a corporation, or to increase the capital stock of any corporation, who knowingly exhibits any false, forged, or altered book, paper, voucher, security, or other instrument of evidence, to any public officer or board authorized by law to examine the organization of such corporation, or to investigate its affairs, or to be allowed an increase of its capital, with intent to deceive such officer or board in respect thereto, is punishable by imprisonment in the state prison not less than three nor more than ten years." Pen. C. 558.

"Every director, officer, or agent of any corporation or joint-stock association, who knowingly receives or possesses himself of any

property of such corporation or association, otherwise than in payment of a just demand, and who, with intent to defraud, omits to make, or to cause or direct to be made, a full and true entry thereof in the books or accounts of such corporation or association, and every director, officer, agent, or member of any corporation or joint stock association who, with intent to defraud, destroys, alters, mutilates, or falsifies any of the books, papers, writings, or securities belonging to such corporation or association, or makes or concurs in making any false entries, or omits, or concurs in omitting to make any material entry in any book of accounts, or other record or document kept by such corporation or association, is punishable by imprisonment in the state prison not less than three nor more than ten years, or by imprisonment in a county jail not exceeding one year, and a fine not exceeding five hundred dollars, or by both such fine and imprisonment." Pen. C. 563.

"Every director, officer, or agent of any corporation or joint-stock association, who knowingly concurs in making, publishing, or posting either generally or privately to the stockholders or other persons, any written report, exhibit, or statement of its affairs or pecuniary condition, or book or notice containing any material statement which is false, or any untrue or wilfully or fraudulently exaggerated report, prospectus, account, statement of operations, values, business, profits, expenditures, or prospects, or any other paper or document

intended to produce or give, or having a tendency to produce or give, the shares of stock in such corporation a greater value or a less apparent or market value than they really possess, or refuses to make any book or post any notice required by law, in the manner required by law, is guilty of a felony." Pen. C. 564.

SECTION 163—SALARIES OF OFFICERS.

Whether or not an officer is entitled to a salary is a question of contract. If the compensation of officers is fixed in the by-laws, as the law provides it may be [C. C. 303], there can be no question but that the officer is entitled to be paid for his services.

There is no presumption, one way or the other, that the services of an officer are rendered gratuitously, or are rendered for hire.¹ The fact that the officer is also a stockholder is immaterial.²

In the absence of a by-law, an officer who sues for services rendered, must prove a contract on the part of the corporation to pay therefor. All evidence bearing on the subject is admissible, whether such evidence be of custom,³ or of an understanding,⁴ or of a resolution of the directors to pay, or of an admission of liability by the board of directors.⁵ The

1. *Barstow v. City R. R. Co.*, 42 Cal. 465; *Fraylor v. Sonora M. Co.*, 17 Cal. 594; *Rosborough v. Shasta Co.*, 22 Cal. 557; *Smith v. Woodville etc. Co.*, 66 Cal. 398, 5 Pac. 686.

2. *Rosborough v. Shasta Co.*, 22 Cal. 557.

3. *Fraylor v. Sonora Min. Co.*, 17 Cal. 594.

4. *Rosborough v. Shasta Co.*, 22 Cal. 557.

5. *Smith v. Woodville etc. Co.*, 66 Cal. 398, 5 Pac. 686.

board can fix the amount of the salary, either before or after the services are rendered,⁶ and can pay officers for extra services rendered, if such services are outside the officers' usual duties.⁷

The corporation has a lien on salaries due, for all liabilities to it of the officer to whom the salary is owing. See *Neall v. Hill*, 16 Cal. 146.

SECTION 164—SAME—OF DIRECTORS.

A director is not entitled to a salary in the absence of a contract in advance.⁸ This contract can be express or implied,⁹ but in the absence of proof of a contract the presumption is always that the services of a director were gratuitous.¹⁰ Except that the interested director must take no part in the act, the board of directors can vote a salary to a director for any extraordinary service;¹¹ but the board cannot vote salaries to itself.¹²

An injunction will be granted restraining corporations from paying salaries voted by directors to themselves, and a decree given, declaring such resolution void. *Hardee v. Sunset Oil Co.*, 56 Fed. 51.

6. *Rosborough v. Shasta Co.*, 22 Cal. 557.

7. *Fox v. Mackay*, 123 Cal. 580, 56 Pac. 434.

8. *Wickersham v. Crittenden*, 93 Cal. 17, 28 Pac. 788; *Brown v. Valley View M. Co.*, 127 Cal. 630, 60 Pac. 424.

9. *McCarthy v. Mount Tecarte Co.*, 111 Cal. 328, 43 Pac. 956; *Barstow v. City R. R. Co.*, 42 Cal. 465.

10. *Barstow v. City R. R. Co.*, 42 Cal. 465.

11. *Wickersham v. Crittenden*, 110 Cal. 332, 42 Pac. 893; unusual services base a quantum meruit. *Bassett v. Fairchild*, 64 Pac. 1080. [Cal. 1901.]

12. *Zellerbach v. Allenberg*, 99 Cal. 57, 33 Pac. 786; *Wickersham v. Crittenden*, 93 Cal. 17, 28 Pac. 788; *Brown v. Valley View M. Co.*, 127 Cal. 630, 60 Pac. 424.

The two year statute of limitations [C. C. P. 339, sub. 1] applies to an action on an implied contract to recover salaries, whether by officers, agents or directors. *McCarthy v. Mt. Tecarte Co.*, 111 Cal. 328, 43 Pac. 956.

For services rendered over two years before action brought, no recovery can be had on an implied contract. If an officer is elected for a term, the statute of limitation against an action to recover salaries begins to run from the end of the term. *Rosborough v. Shasta Co.*, 22 Cal. 557.

CHAPTER XVIII.

BOOKS AND RECORDS.

SEC. 165—WHAT BOOKS MUST BE KEPT.

SEC. 166—BOOKS AND RECORDS AS EVIDENCE.

SEC. 167—SAME—PENALTIES FOR WRONGFUL USE.

SECTION 165—WHAT BOOKS MUST BE KEPT.

Article XII, section 14 of the state constitution declares that "every corporation other than religious, educational or benevolent, organized or doing business in this state, shall have and maintain an office or place in this state for the transaction of its business, where transfers of stock shall be made, and in which shall be kept for inspection by every person having an interest therein, and legislative committees, books in which shall be recorded the amount of capital stock subscribed, and

by whom; the names of the owners of its stock and the amounts owned by them respectively; the amount of stock paid in, and by whom; the transfer of stock; the amount of its assets and liabilities, and the names and places of residence of its officers."

Re-enforcing this provision the Civil Code [Sec. 378] requires "that corporations for profit must keep a book, to be known as the 'Stock and Transfer Book,' in which must be kept a record of all stock, the names of the stockholders or members alphabetically arranged; installments paid or unpaid; assessments levied and paid or unpaid; a statement of every alienation, sale, or transfer of stock made, the date thereof, and by and to whom; and all such other records as the by-laws prescribe."

In addition, "all corporations for profit are required to keep a record of their business transactions; a journal of all meetings of their directors, members or stockholders, with the time and place of holding the same, whether regular or special, and if special, its object, how authorized, and the notice thereof given. The record must embrace every act done or ordered to be done; who were present and who absent; and, if requested by any director, member, or stockholder, the time shall be noted when he entered the meeting or obtained leave of absence therefrom. On a similar request the ayes and noes must be taken on any proposition, and a record thereof made. On similar request, the protest of any

director, member, or stockholder, to any action or proposed action, must be entered in full." C. C. 377.

"All by-laws adopted must be certified by a majority of the directors and secretary of the corporation, and copied in a legible hand, in some book kept in the office, to be known as the 'Book of By-laws,' and the book must then be open to the inspection of the public during office hours each day except holidays. Whenever any amendment or new by-law is adopted it must be copied in the book of by-laws with the original by-laws and immediately after them. If any by-law is repealed, the fact of repeal, with the date of the meeting at which the repeal was enacted, or written assent was filed, must be stated in said book. Until copied therein as required, no by-law or any amendment or repeal thereof, can be enforced against any person, other than the corporation, not having actual notice thereof." C. C. 304.

"Corporations for religious and benevolent purposes must provide in their by-laws for such records to be kept as may be necessary." C. C. 378.

"The president of every savings bank, savings and loan society, and every other bank, depository, society, or institution in which deposits of money are made, whether any interest or dividend is paid, or agreed to be paid, thereon or not, must, within fifteen days after the first day of January of every odd-numbered year, return to the board of

bank commissioners a sworn statement showing the amount placed to his credit, his last known place of residence or postoffice address, and the fact of death, if known to such president, of every depositor who has not made a deposit therein or withdrawn therefrom any part of his deposit, or any part of the interest or dividends thereon, for a period of more than ten years next preceding. Such president must give notice of these deposits in one or more newspapers published in or nearest the town, city, or city and county where such bank, society, or other institution is situated or has its principal place of business, at least once a week for four successive weeks, the cost of such publication to be paid pro rata out of such unclaimed deposits. This section does not apply to any deposit made by or in the name of a person known to the president to be living, and which, with the accumulation thereon, is less than fifty dollars. The board of bank commissioners must incorporate in their subsequent report each return made to them as provided in this section. Any president of either of the institutions mentioned in this section who neglects or refuses to make the sworn statement required thereby is guilty of a misdemeanor." Sec. 580 C. C. [This section codifies Stats. 1897 p. 27, Stats. 1893 pp. 183, 717.]

(For a discussion of the monthly reports which the law requires mining corporations to make, see Sec. 145, *supra*.)

SECTION 166—BOOKS AND RECORDS AS EVIDENCE.

The books of a corporation are competent evidence of its acts,¹ but they are not the sole evidence of such acts.² There is nothing conclusive about entries in the books of a corporation. See C. C. P. 1962, 1978.

With respect to the appointment of agents or to the contracts of a corporation, its books are not primary evidence in the sense that all other evidence is secondary.³ Entries in such books, duly authenticated, are perhaps the "best" evidence, but such entries can be contradicted or varied by parol.⁴ As long ago as 1867, the Supreme Court of this state declared "that it was too well settled to admit of argument that private corporations with regard to the appointment of agents and the making of contracts are placed upon the same footing as natural persons, unless limited to some particular mode by their charter." *Carey v. Philadelphia etc. Co.*, 33 Cal. 694.

The codes do not require corporations to keep *subscription* books, nor direct how subscriptions shall be made. Any of the books regularly used by the corporation is competent to prove the number of shares outstand-

1. *Schallard v. Eel R. etc. Co.*, 70 Cal. 144, 11 Pac. 590; *Borland v. Haven*, 37 Fed. 394; *San Pedro etc. Co. v. Reynolds*, 121 Cal. 74, 53 Pac. 410.

2. *Schallard v. Eel R. etc. Co.*, 70 Cal. 144, 11 Pac. 590; *Bay View etc. Asso. v. Williams*, 50 Cal. 353.

3. *Carey v. Philadelphia etc. Co.*, 33 Cal. 694; *Purser v. Eagle Lake Co.*, 111 Cal. 139, 43 Pac. 523.

4. *Gilson etc. Co. v. Gilson*, 51 Cal. 341; *Boggs v. Lakeport etc. Asso.*, 111 Cal. 354, 43 Pac. 1106; *Bay View etc. Asso. v. Williams*, 50 Cal. 353.

ing,⁵ the number of shares subscribed for and issued at any point of time,⁶ and who were shareholders on a given date.⁷ All such evidence can be rebutted. *Mudgett v. Harrell*, 33 Cal. 25; *Gilson etc. Co. v. Gilson*, 51 Cal. 341; *Boggs v. Lakeport etc. Co.*, 111 Cal. 354, 43 Pac. 1106.

The articles of incorporation are not evidence of who were stockholders at the time a certain debt was contracted, unless such debt arose at the incorporation of the company, for there is no presumption that between the time of incorporation and the time of creating the debt transfers of stock have not been made. *Evans v. Bailey*, 66 Cal. 112, 4 Pac. 1089.

An entry on the books of the corporation by the proper officer is notice to the corporation of the information contained in such entry. *Phillips v. Sanger L. Co.*, 130 Cal. 431, 62 Pac. 749.

SECTION 167—SAME—PENALTIES FOR WRONGFUL USE.

Such records and books as the law requires corporations to keep must be kept open to the inspection of any director, stockholder, member, creditor. [C. C. 377, 378.] "Every officer or agent of any corporation having or keeping an office within this state, who has in his custody or control any book, paper or doc-

5. *Knowles v. Sandercock*, 107 Cal. 629, 40 Pac. 1047.

6. *Evans v. Bailey*, 66 Cal. 112, 4 Pac. 1089.

7. *Mudgett v. Harrell*, 33 Cal. 25; *Evans v. Bailey*, 66 Cal. 112, 4 Pac. 1089.

ument of such corporation, and who refuses to give to a stockholder or member of such corporation, lawfully demanding during office hours to inspect or take a copy of the same, or of any part thereof, a reasonable opportunity so to do, is guilty of a misdemeanor. Pen. C. 565.

Wherever a civil liability is provided for failure to make or publish any report, it is no defense to an action therefor to allege that the corporation has no place of business or office. "The law contemplates every corporation shall have an office, and it is the duty of the directors to have one." *Chapman v. Doray*, 89 Cal. 52, 26 Pac. 605.

The attorney general of the state or the district attorney, whenever and as often as requested by the governor, may examine the books, papers and documents belonging to any corporation in the state, or appertaining to its affairs and conditions. C. C. 382.

The legislature or either branch thereof may at all times examine the safes, books, papers and documents belonging to any corporation in the state, and compel the production of all keys, papers, books and documents by summary process, to be issued on application to any court of record or any judge thereof, under such rules and regulations as the court may prescribe. C. C. 383.

"Every officer, agent or clerk of any corporation, or of any persons proposing to organize a corporation, or to increase the capital stock of any corporation, who knowingly

exhibits any false, forged or altered book, paper, voucher, security or other instrument of evidence, to any public officer or board authorized by law to examine the organization, or to investigate its affairs, or to be allowed an increase of its capital, with intent to deceive such officer or board in respect thereto, is punishable by imprisonment in the state prison not less than three nor more than ten years." Pen. C. 558. See Sec. 143, *supra*, for liabilities, civil and penal, for keeping false books or records.

CHAPTER XIX.

CREDITORS.

SEC. 168—CORPORATIONS AS DEBTORS.

SEC. 169—UNPAID SUBSCRIPTIONS TO STOCK AS A FUND FOR CREDITORS.

SEC. 170—SAME—THE RIGHT OF ACTION.

SEC. 171—SAME—ACTION AT LAW.

SEC. 172—SAME—DEFENSES.

SEC. 173—SAME.

SEC. 174—RIGHTS AGAINST DIRECTORS FOR BREACH OF TRUST.

SECTION 168—CORPORATIONS AS DEBTORS.

When a corporation contracts a debt, it bears the same relation to its creditor that any other debtor does. The creditor, as such, has no right to control or in any way to interfere with the business of the corporation. He has the same rights he would have had were a natural person his debtor; but not more. *Reed v. Goldstein*, 53 Cal. 246.

The liability of stockholders and directors to the creditors of the corporation gives such creditors an additional security. This chapter is devoted to the nature of that liability and the methods of enforcing it.

SECTION 169—UNPAID SUBSCRIPTION TO STOCK AS A FUND FOR CREDITORS.

Unpaid subscriptions to its stock are a debt to, and asset of, the corporation [*Potter v. Dear*, 95 Cal. 578, 30 Pac. 777], and all the

assets of a corporation, including its capital stock, are a fund devoted by law to the payment of its creditors, which fund the corporation is forbidden to dissipate or place beyond their reach. [San Francisco etc. R. R. Co. *v.* Bee, 48 Cal. 398.] At common law, a creditor reached debts owing to his debtor by an action in equity known as the judgment-creditors' bill, and this is the nature of the action by which creditors reach the unpaid subscriptions to the capital stock of their corporation-debtor. [See Sec. 170, *post.*] The statutory liability of stockholders (which will be considered in chapter XX, *post*) is an additional, not an alternative, remedy. *Harmon v. Page*, 62 Cal. 448; *Baines v. Babcock*, 95 Cal. 581, 30 Pac. 776.

SECTION 170—SAME—THE RIGHT OF ACTION.

The action by which creditors reach unpaid subscriptions to stock—the so-called judgment-creditors' bill—is peculiar in many respects. It is an equitable action brought by any creditor on behalf of himself and all other creditors who may join in the action.¹ In California such other creditors can only join in the action by intervening, and such intervention must take place before trial.² Only judgment-creditors can bring the action and only judgment-creditors can intervene.³ The plaintiff must have exhausted all the "legal" assets

1. *Tatum v. Rosenthal*, 95 Cal. 129, 30 Pac. 136; *Baines v. Babcock* 95 Cal. 581, 30 Pac. 776.

2. *Baines v. Babcock*, 104 Cal. 1, 37 Pac. 767; C. C. P. 378.

3. *Baines v. Babcock*, 104 Cal. 1, 37 Pac. 767.

of the corporation itself, by which is meant simply that execution must have issued on his judgment and have been returned unsatisfied.⁴ Equity refuses to inquire if the corporation has property or if the sheriff was diligent.⁵ Each subscriber to stock is a several debtor to the corporation, and therefore the creditor whose judgment has been returned unsatisfied, can maintain this bill against any one or more of the stockholders that he sees fit to make defendants.⁶ A bill is not demurrable because all stockholders have not been joined as defendants.⁷ The corporation should be joined as defendant, but it is not an indispensable party, and the defect is cured by failing to demur specially.⁸ It is a condition precedent to this action, to prove that one-fourth the authorized capital stock of the corporation has been subscribed.⁹

In the absence of collusion or fraud,¹⁰ the judgment against the corporation is conclusive against the stockholders;¹¹ it is no defense to allege that the debt was "ultra vires" the cor-

4. *Potter v. Dear*, 95 Cal. 578, 30 Pac. 777; *Baines v. Babcock*, 95 Cal. 581, 30 Pac. 776.

5. *Baines v. Babcock*, 95 Cal. 581, 30 Pac. 776.

6. *Id.*

7. *Walter v. Merced Acad. Asso.*, 126 Cal. 582, 59 Pac. 136; *Baines v. Babcock*, 95 Cal. 581, 30 Pac. 776; *Potter v. Dear*, 95 Cal. 578, 30 Pac. 777.

8. *Potter v. Dear*, 95 Cal. 578, 30 Pac. 777.

9. *Walter v. Merced Acad. Asso.*, 126 Cal. 582, 59 Pac. 136.

10. *Nat. etc. Co. v. Story etc. Co.*, 111 Cal. 581, 44 Pac. 157.

11. *Tatum v. Rosenthal*, 95 Cal. 129, 30 Pac. 136; *Baines v. Babcock*, 95 Cal. 581, 30 Pac. 776.

poration.¹² It is not necessary to allege for what the judgment was recovered.¹³

Those stockholders who are such at the time of bringing suit against them, and also those persons who allow their names to stand on the books as stockholders,¹⁴ or who by receiving dividends or otherwise acting as stockholders¹⁵ estop themselves to deny that they are such, are liable to this action, provided only that such persons are in fact indebted to the corporation for any part of the purchase price of their stock.

There is no law in California that compels a purchaser of stock to pay the par value thereof, either to the corporation or its creditors, without a contract to that effect. If stock is sold, whether for cash or property, and the full amount of the purchase price is paid, there is no debt due from the purchaser to the corporation and therefore none that a creditor can sequester. *In re So. Mount C. M. Co.*, 7 Sawyer 30; *Kellerman v. Maier*, 116 Cal. 416, 48 Pac. 377.

Whatever sums are recovered in this action, will be applied by the court, ratably to all creditors. *Harmon v. Page*, 62 Cal. 448; *Potter v. Dear*, 95 Cal. 578, 30 Pac. 777; *Baines v. Babcock*, 95 Cal. at 590, 30 Pac. 776; *Welch v. Sargent*, 127 Cal. 72, 59 Pac. 319.

12. *Baines v. Babcock*, 95 Cal. 581, 30 Pac. 776.

13. *Tatum v. Rosenthal*, 95 Cal. 129, 30 Pac. 136.

14. *Baines v. Babcock*, 95 Cal. 581, 30 Pac. 776.

15. *Walter v. Merced Acad. Asso.*, 126 Cal. 582, 59 Pac. 136.

SECTION 171—SAME—ACTION AT LAW.

In addition to the equitable remedy by judgment-creditors bill, the unpaid price of stock can be reached by creditors in certain cases, by a simple action at law. [Ryan v. Jacques, 103 Cal. 280, 37 Pac. 186.] We have already noticed the two different methods for collecting "calls." [See Chap. XIII, *supra*.] One only after assessment levied, the other by simple action at law, if the subscription is an absolute and unconditional promise to pay. If the debt that the stockholder owes to the corporation is of this second kind, that is, if the debt is due without the necessity of first levying an assessment, creditors can reach it through the attachment process. [See Marysville Co. v. Johnson, 93 Cal. 538, 29 Pac. 126; West v. Crawford, 80 Cal. 19, 21 Pac. 1123; Kohler v. Agassiz, 99 Cal. 9, 33 Pac. 741.] But if not so due, attachment or garnishment will not lie, for such proceedings reach only debts due at the time of levy. C. C. P. 544.

As all subscriptions to stock contain the implied condition to pay "as required," if the corporation is insolvent, every stockholder's debt to the corporation is then due—an assessment by the directors is dispensed with¹—and an action at law on the contract of subscription lies for the benefit of creditors against each stockholder, either by the corporation or by

¹ Cal. Hotel Co. v. Callender, 94 Cal. 120, 29 Pac. 859; Kohler v. Agassiz, 99 Cal. 9, 33 Pac. 741; Nat. etc. Co. v. Story etc. Co., 111 Cal. 531, 44 Pac. 157.

the assignee in insolvency, if there be one. *Kohler v. Agassiz*, 99 Cal. 9, 33 Pac. 741.

Being a simple contract debt,² if the amount is less than three hundred dollars, the action can be brought in the justice's court. *Arroyo Co. v. Superior Court*, 92 Cal. 47, 28 Pac. 54.

SECTION 172—SAME—DEFENSES.

Collateral agreements between the corporation and a stockholder, to consider unpaid stock fully paid or not to call for any unpaid amounts, are binding on the corporation; but not on its creditors, unless they had notice thereof at the time their claim against the corporation arose. See chapter XI, *supra*. Also *Richardson v. Chicago Packing Co.*, 63 Pac. 74 (Cal. 1900).

Ordinarily a transfer of stock relieves the transferor from any further liability for calls, but after the corporation is in an insolvent condition and the stockholder knows it, he cannot by a transfer of his stock to an insolvent or irresponsible person, relieve himself from liability. Actual intent to defraud creditors is not necessary; such intent is presumed. The law calls the result of such a transfer a fraud.³ The conversion of its stock by a corporation, after insolvency, will not relieve the stockholder from liability, because the corporation in such case is itself an irre-

² *Kohler v. Agassiz*, 99 Cal. 9, 33 Pac. 741; *Russell v. Pac. Ry Co.*, 113 Cal. 258, 45 Pac. 323.

³ *Nat. etc. Co. v. Story etc. Co.*, 111 Cal. 531, 44 Pac. 157; *Welch v. Sargent*, 127 Cal. 72, 59 Pac. 319.

sponsible transferee. *National etc. Co. v. Story, etc. Co.*, 111 Cal. 531, 44 Pac. 157.

After the corporation is insolvent, a stockholder cannot voluntarily pay his unpaid subscription price to the corporation or to any creditor, so as to relieve himself from further liability thereon. Only at a call by the corporation or its assignee in insolvency or of a court of competent jurisdiction will a payment extinguish the liability; otherwise the full debt remains, and amounts voluntarily paid cannot be set-off against any creditor. [*Welch v. Sargent*, 127 Cal. 72, 59 Pac. 319.] To allow payments voluntarily made to one creditor to be set off against another, would be to allow a stockholder to prefer any creditor he might select. This the law does not permit. *Richardson v. Chicago Packing Co.*, 63 Pac. 74 (Cal. 1900).

The creditor of a corporation has two debtors, one the corporation, the other the stockholders, and the amount he may prove against the estate of either is not affected by any dividend he may receive from the estate of the other, except that the amount received from both shall not exceed the aggregate of his debt. *Sacramento Bank v. Pacific Bank*, 124 Cal. 147, 56 Pac. 787.

SECTION 173—SAME.

When stockholders who are indebted to the corporation for part or all of the purchase price of their stock, are also creditors of the corporation, a question of priority arises. A

creditor is not deprived of his rights as a creditor because he is also a stockholder,¹ but he is postponed in certain cases, to non-stockholding creditors. [Richardson v. Chicago Packing Co., 63 Pac. 74, (Cal. 1900).] The creditor, in such case, recovers the difference between what he owes the corporation for unpaid stock and the amount of his judgment. [*Id.*] If the amount he owes to the corporation is greater than the amount of its debt to him, he is postponed, as a creditor, to non-stockholding creditors, but as a debtor to the corporation he can set off the amount due to him from it. Kimball v. Richardson-Kimball Co., 111 Cal. 386, 43 Pac. 1111.

If the creditor-stockholder and the corporation are both insolvent, the insolvent creditor's estate is not allowed to recover from the corporation, but such insolvent must pay his debt to the corporation in the same pro rata that all his other creditors are paid, and then such estate receives on the full amount of its claim the pro rata dividend declared by the corporation's assignee. Kimball v. Richardson-Kimball Co., 111 Cal. 386, 43 Pac. 1111.

The statute of limitations against calls begins to run either from the time the corporation makes such a call or openly ceases to do business or dissolves. Harman v. Page, 62 Cal. 448.

1 Bonney v. Tilley, 109 Cal. 346, 42 Pac. 439.

SECTION 174—RIGHTS AGAINST DIRECTORS FOR BREACH OF TRUST.

There is no privity between the directors of a corporation and its creditors because of debts or contracts between the corporation and creditors. If the directors waste the funds of the corporation or misappropriate the same or create debts beyond the limit allowed by law, the directors are liable for all damages the creditors of the corporation sustain thereby. Such liability cannot be enforced by an action for damages by any single creditor, but the remedy is a creditor's bill in behalf of all creditors [see Sec. 170 *supra*], and all the tort-feasors and the corporation must be joined as defendants. The court can then compel an accounting and decree damages to the creditors. *Reed v. Goldstein*, 53 Cal. 296.

The theory of such an action is that all the assets of a corporation are a fund upon which its business is to be done and upon which its credit rests, and that the subscribed capital stock is a guaranty to creditors that all obligations up to that amount will be met. *Moore v. Lent*, 81 Cal. 502, 22 Pac. 875. See Sec. 169, *supra*.

The remedy provided by the constitution, [Art. XII, Sec. 3] and the code [C. C. 327] for misappropriation of funds or embezzlement is a cumulative remedy [see Chap. XVI *supra*]; it does not take away or abrogate the remedy against directors for breach of trust. *Hiller v. Collins*, 63 Cal. 235.

Directors of an insolvent corporation, who

are also creditors of the corporation, cannot secure to themselves any preferences or advantages over other creditors. *Bonney v. Tilley*, 109 Cal. 346, 42 Pac. 439.

CHAPTER XX.

STOCKHOLDER'S STATUTORY LIABILITY.

- SEC. 175—NATURE OF THE LIABILITY.
- SEC. 176—SAME—A TERM OF THE STOCKHOLDER'S CONTRACT.
- SEC. 177—SAME—PRIMARY, NOT SECONDARY.
- SEC. 178—SAME—SEVERAL, NOT JOINT.
- SEC. 179—SAME—WHEN IT ARISES.
- SEC. 180—SAME—BARRED IN THREE YEARS.
- SEC. 181—SAME—CANNOT BE EXTENDED BY ANY ACTS OF THE CORPORATION.
- SEC. 182—EXTENT OF LIABILITY.
- SEC. 183—SAME—SUBROGATION.
- SEC. 184—PERSONS LIABLE.
- SEC. 185—DEFENSES—PAYMENT AND SET-OFF.
- SEC. 186—SAME—WAIVER.

SECTION 175—NATURE OF THE LIABILITY.

The individual liability of the stockholders for the debts of the corporation is wholly statutory. It is a liability imposed upon one person for debts contracted by another, and was unknown at common law. *Hunt v. Ward*, 99 Cal. 612, 34 Pac. 335.

The present constitution, the constitution of 1849, and every general corporation statute that has ever been enacted in California, have made the stockholders liable for the debts of the corporation. It is the settled public policy of the state. Const. 1849, Art. VI, Secs. 32, 36; Const. 1879, Art. XII, Sec. 23; Stats.

1850, p. 344; C. C. 322. See also *Williams v. Gold Hill etc. Co.*, 96 Fed. 454.

The present constitution declares that each stockholder of a corporation, or joint-stock association, shall be individually and personally liable for such proportion of all its debts and liabilities contracted or incurred during the time he was a stockholder, as the amount of stock or shares owned by him bears to the whole of the subscribed capital stock, or shares of the corporation or association. [Art. XI, Sec. 3.] With an excess of caution or zeal, or both, it also provides that "dues from corporations shall be secured by such individual liability of the corporators and other means as may be prescribed by law." [Art. XII, Sec. 2.] The two sections of the constitution were declared in *French v. Teschemaker*, 24 Cal. 516, to be not self-executing, and not enforceable until the legislature prescribed the measure of liability and mode of collecting. The present statute, re-enforcing and executing these sections is section 322 of the Civil Code, which section of the code is identical with the statute it superseded.

The individual liability thus prescribed is a constituent element in the artificial life of the corporation, made so by the author of its creation. Therefore, an act of the legislature authorizing the formation of corporations without attaching to the corporators an individual liability would be as obnoxious to the constitution as would be the creation of a corporation by special act, and the courts would

be bound to hold that the persons organized under such an act had acquired none of the rights of a corporation. [*French v. Teschemaker*, 24 Cal. 516.] A by-law exempting stockholders from individual liability would be null and void. *Wells v. Black*, 117 Cal. 157, 48 Pac. 1090.

SECTION 176—SAME—A TERM OF THE STOCKHOLDER'S CONTRACT.

Every person who becomes a stockholder, by that act authorizes the corporation to bind him personally for all its debts. Such liability is a burdensome condition imposed by law, but it becomes part of the stockholder's contract with the corporation, and when the creditor sues to enforce the right thus given him, he does so by a simple contract action. *Kennedy v. Cal. Sav. Bank*, 97 Cal. 93, 31 Pac. 846; *McGowan v. McDonald*, 111 Cal. 57, 43 Pac. 418; *Morrow v. Superior Court*, 64 Cal. 383, 1 Pac. 354.

Though imposed by law,¹ the personal liability of a stockholder is an obligation arising upon contract, and therefore if the sum demanded is less than \$300, justice's courts have jurisdiction of the action.² It is so far a contract action, that attachment can be had as a provisional remedy,³ and similar liabil-

1. *McGowan v. McDonald*, 111 Cal. 57, 43 Pac. 418.

2. *Dennis v. Superior Court*, 91 Cal. 548, 27 Pac. 1031; *Morrow v. Superior Court*, 64 Cal. 383, 1 Pac. 354; *Myers v. Sierra Valley Asso.*, 122 Cal. 669, 55 Pac. 689. *Derby v. Stevens*, 64 Cal. 287, 30 Pac. 820; *Grimwood v. Barry*, 118 Cal. 274, 50 Pac. 430.

3. *Kennedy v. Cal. Sav. Bank*, 97 Cal. 93, 31 Pac. 846.

ities arising under the laws of other states will be enforced here. *Bank of B. N. A. v. Rindge*, 57 Fed. 279; *Ferguson v. Sherman*, 116 Cal. 169, 47 Pac. 1023.

SECTION 177—SAME—PRIMARY, NOT SECONDARY.

The creditor of a corporation has two debtors—the corporation and the stockholders.¹ Both are principal debtors, for the stockholders are not sureties. They stand toward the creditors as if they were conducting the corporate business as partners.² It is therefore unnecessary for a creditor to first sue the corporation. *Davidson v. Rankin*, 34 Cal. 503; *Young v. Rosenbaum*, 39 Cal. 646.

SECTION 178—SAME—SEVERAL, NOT JOINT.

The code provision is that "any creditor of the corporation may institute joint or several actions against any of the stockholders." [C. C. 322.] This liability is a several one;³ each stockholder may be sued separately, and there is no objection to a creditor-stockholder suing another creditor-stockholder for his pro rata of the debt.⁴ Any number of the stockholders may be joined as defendants and plaintiff recovers in one action the pro rata of each.

1. *Sacramento Bank v. Pacific Bank*, 124 Cal. 147, 56 Pac. 787; *Faymonville v. McCollough*, 59 Cal. 285.

2. *Mokelumne etc. Co. v. Woodbury*, 14 Cal. 265; *Young v. Rosenbaum*, 39 Cal. 646; *Davidson v. Rankin*, 34 Cal. 503; *Sonoma Valley Bank v. Hill*, 59 Cal. 107; *Mitchell v. Beckman*, 64 Cal. 117.

3. *Richter v. Henningsen*, 110 Cal. 530, 42 Pac. 1077; *Grinwood v. Barry*, 118 Cal. 274, 50 Pac. 430.

4. *Brown v. Merrill*, 107 Cal. 446, 40 Pac. 557; *Knowles v. Sandercock*, 107 Cal. 629, 40 Pac. 1047.

The action is one at law, and there is no need to resort to equity on the principle of avoiding multiplicity of suits.⁵ Each stockholder being a distinct debtor, a creditor can sue whichever one or ones he chooses;⁶ each is severally liable for his own pro rata.⁷

SECTION 179—SAME—WHEN IT ARISES.

"No case can be conceived of where there is a valid debt against a corporation that does not create at the time of creating the debt a valid debt against the stockholders." [*Borland v. Haven*, 37 Fed. 394.] Any evidence which is competent to prove the liability of the corporation must be competent to prove the liability of the stockholders [*McGowan v. McDonald*, 111 Cal. 57, 43 Pac. 418; compare *Neilson v. Crawford*, 52 Cal. 248, which is virtually overruled by the *McGowan* case], for when the creditor proves that a liability of the corporation to him arose at a certain time, he has also proved that those who were stockholders at that time are liable to him for the same debt. *Wells v. Black*, 117 Cal. 157, 48 Pac. 1090; *Winona etc. Co. v. Bull*, 108 Cal. 1, 40 Pac. 1077; *Young v. Rosenbaum*, 39 Cal. 646; *Davidson v. Rankin*, 34 Cal. 503; *Derby v. Stevens*, 64 Cal. 287, 30 Pac. 820.

A judgment against a corporation is *prima facie*, if not conclusive, evidence against the stockholder. [*Borland v. Haven*, 37 Fed. 394.] A depositor in a savings bank becomes

5. *Myers v. Sierra Valley Asso.*, 122 Cal. 669, 55 Pac. 689.

6. *Mitchell v. Beckman*, 64 Cal. 117.

7. *Morrow v. Superior Court*, 64 Cal. 383, 1 Pac. 354.

a creditor the moment he makes a deposit, and, if such bank has a capital stock, the statutory liability of the stockholders arises at the same time. *Wells v. Black*, 117 Cal. 157, 48 Pac. 1090; *Nellis v. Pac. Bank*, 127 Cal. 166, 59 Pac. 830.

It is often a difficult question of fact to determine at what moment the liability was created. There is a distinction between the creation of liability and the accruing of the cause of action thereon. For example, the liability of a corporation is created at the making of its promissory note, the cause of action at its maturity. [*Hunt v. Ward*, 99 Cal. 612, 34 Pac. 355.] In determining the stockholder's liability we are only concerned with the time of the creation of the liability, for the statute says those stockholders are liable who were such at the time the debt or liability arose, not at the time of maturity of the corporation's express promise to pay. *Winona etc. Co. v. Bull*, 108 Cal. 1, 40 Pac. 1077.

Where the debt is on an open account with payments from time to time and a final settlement, the liability arises at the time of such settlement [*London etc. Bank v. Parrott*, 125 Cal. 472, 58 Pac. 164], and where the debt is on a contract of hiring by the job or by the year, the liability arises at the completion of the job or at the end of the year. *Johnson v. Bank of Lake*, 125 Cal. 6, 57 Pac. 664.

Whenever the corporation is estopped to set

up ultra vires as a defense, the stockholders, if sued on the same contract, are also estopped. Though the corporation is estopped, there is a subsisting debt against the corporation and such debt is conclusive against the stockholders. *Main v. Casserly*, 67 Cal. 127, 7 Pac. 426; *Mitchell v. Beckman*, 64 Cal. 117.

The remedy against the corporation may for some cause be suspended or barred, without impairing the remedy against the stockholders, for the liability of the latter is only conditional or contingent in this: that there must be a subsisting debt against the corporation. *Young v. Rosenbaum*, 39 Cal. 646.

SECTION 180—SAME—BARRED IN THREE YEARS.

It must be regarded as settled law in this state, that the liability of a stockholder for his proportion of the corporation's debts is a liability created by law within the meaning of section 359, Code of Civil Procedure, and that an action to enforce such liability must be brought within three years after the cause of action accrues against the stockholder,¹ that is, three years from the time that the liability was created by the corporation,² not from the time a cause of action against it arose.

1. *Bank v. Pac. Coast S. S. Co.*, 103 Cal. 594, 37 Pac. 499; *Hunt v. Ward*, 99 Cal. 612, 34 Pac. 335; *Hyman v. Coleman*, 82 Cal. 650, 23 Pac. 62; *Moore v. Boyd*, 74 Cal. 167, 15 Pac. 670; *Wells v. Black*, 117 Cal. 157, 48 Pac. 1090.

2. See Sec. 179 *ante*; also *Larrabee v. Baldwin*, 85 Cal. 155; *Stillphen v. Ware*, 45 Cal. 110; *Davidson v. Rankin*, 34 Cal. 503; *Johnson v. Bank of Lake*, 125 Cal. 6, 57 Pac. 664; *Glen v. Saxton*, 88 Cal. 353, 9 Pac. 420.

A complaint which sets forth the date when a promissory note was made by the corporation, but does not state the date when the debt for which it was given was contracted, is demurrable.¹ The liability of the stockholder arose at least as early as the date of the making of the note, but not necessarily at that time, unless the liability itself was created by the note. *Bank v. P. C. S. S. Co.*, 103 Cal. 594, 37 Pac. 499; *Redington v. Cornwell*, 90 Cal. 49, 27 Pac. 40; *Case Plow Works v. Montgomery*, 115 Cal. 380, 47 Pac. 180.

SECTION 181—SAME—CANNOT BE EXTENDED BY
ANY ACTS OF THE CORPORATION.

As the stockholders' liability arises at the moment the debt of the corporation is created and runs for three years from that time, the corporation is powerless to extend the period of limitation.² It may well happen that the liability of the stockholder is barred before any cause of action arose against the corporation at all, as for example when a creditor has accepted a three year note.

The corporation cannot extend the liability of the stockholders as to time, by giving a note,³ or a renewal note,⁴ by stating an account or carrying an open or mutual

1. *Hunt v. Ward*, 99 Cal. 612, 34 Pac. 335; *Redington v. Cornwell*, 90 Cal. at 63, 27 Pac. 40; *case v. Montgomery*, 115 Cal. 380, 47 Pac. 180.

2. *Redington v. Cornwell*, 90 Cal. 49, 27 Pac. 40.

3. *Redington v. Cornwell*, 90 Cal. 49, 27 Pac. 40; *Winona etc. Co. v. Bull*, 108 Cal. 1, 40 Pac. 1077.

4. *Santa Rosa Nat. Bank v. Barnett*, 125 Cal. 407, 58 Pac. 85; *Hyman v. Coleman*, 82 Cal. 650, 23 Pac. 62; *Hunt v. Ward*, 99 Cal. at 615, 34 Pac. 335.

account.¹ In the latter case, the statute would begin to run with the contracting of each item of debt,² and as all payments made would be presumed in law to be applied to the first items contracted, all items contracted over three years before action brought would be barred, but none of those contracted within three years.³

A judgment against the corporation does not serve to prolong the time in which an action will lie against the stockholders. *Stilphen v. Ware*, 45 Cal. 110; *Larrabee v. Baldwin*, 35 Cal. 155.

SECTION 182—EXTENT OF LIABILITY.

The liability of each stockholder is determined by the amount of stock or shares owned by him at the time the debt or liability was incurred [C. C. 322], and he is liable to each and every creditor for such proportion of that creditor's claim as his stock bears to the whole number of shares of the subscribed capital stock. [C. C. 322.]⁴ Unless three facts are pleaded—(a) the number of shares of the defendant; (b) total of subscribed shares; (c) amount of the debt—the complaint is demurrable.⁵ Expressed in terms of proportion, the defendant's liability is to the whole amount of plaintiff's debt as the number of defendant's shares is to the whole number of sub-

1. *Hyman v. Coleman*, 82 Cal. 650, 23 Pac. 62, and cases cited.

2. *Redington v. Cornwell*, 90 Cal. 49, 27 Pac. 40.

3. *London etc. Bank v. Parrott*, 125 Cal. 472, 58 Pac. 164.

4. *Bidwell v. Babcock*, 87 Cal. 29, 25 Pac. 752.

5. *Roebiling's Sons Co. v. Butler*, 112 Cal. 677, 45 Pac. 6.

scribed shares. The debt here spoken of means the debt that might be enforced against the corporation.³

A creditor cannot get full satisfaction from any one stockholder, even if that stockholder's proportionate liability for all the corporation's debts is large enough to cover the creditor's demand. There is an early decision that he can so collect from one stockholder,⁴ but that case was based on the peculiar provision of the statute of 1853, chapter 87, section 16, as amended by statute of 1863, page 736, and was never the general rule in this state.⁵

SECTION 183—SAME—SUBROGATION.

A stockholder, at demand of any creditor, can pay the corporation's debt to such creditor in full or in part, and for whatever amount he pays in excess of his own pro rata, he is subrogated to the rights of the creditor, both against the corporation and against the other stockholders.⁶ The same is true where the stockholder was a guarantor or surety⁷ for the corporation on a contract or indorser on a note.⁸

3. *Walters v. Henningsen*, 114 Cal. 433, 46 Pac. 227.

4. *Larrabee v. Baldwin*, 35 Cal. 155.

5. *Morrow v. Superior Court*, 64 Cal. 383, 1 Pac. 354.

6. *Redington v. Cornwell*, 90 Cal. 49, 27 Pac. 40. A stockholder in an insolvent corporation, who pays to the receiver his proportion of an assessment levied on the shareholders, cannot recover any part of the money so paid, on the ground that the assessment produced a fund larger than was necessary to pay all debts. Such a payment is not a payment under duress. *Holt v. Thomas*, 105 Cal. 273, 38 Pac. 891.

7. *Borland v. Haven*, 37 Fed. 394; *Redington v. Cornwell*, 90 Cal. 49, 27 Pac. 40.

8. *Ryland v. Commercial Bank*, 127 Cal. 525, 59 Pac. 937.

His cause of action accrues at the time he pays the creditor¹ and is barred in three years from such date.² The right of contribution is barred in two years.³

SECTION 184—PERSONS LIABLE.

The stockholders who are such at the time the liability or debt is created, are the ones liable to creditors for such debt or liability.⁴ The time when the cause of action accrues against the corporation is immaterial—the time when the debt was created is all important.⁵

No transfer relieves such a stockholder from liability.⁶ The creditor has the right to look to the books of the corporation to see who are liable to him.⁷ Therefore, for debts created after a transfer has been made, but before it is registered on the books, the transferor is liable.⁸ Such transferor has the right of contribution from his transferee. See Chap. XII, *supra*.

The term "stockholder" in this connection applies not only to such persons as appear by the books of the corporation to be such,⁷ and

1. *Borland v. Haven*, 37 Fed. 394; *Ferris v. Baker*, 127 Cal. 520, 59 Pac. 937.

2. *Eyland v. Commercial Bank*, 127 Cal. 525, 59 Pac. 937.

3. *Richter v. Henningsen*, 110 Cal. 530, 42 Pac. 1077.

4. *Hunt v. Ward*, 99 Cal. 612, 34 Pac. 355; *Blen v. Bear R. etc. Co.*, 20 Cal. 602.

5. *Larrabee v. Baldwin*, 35 Cal. 155; *Johnson v. Bank of Lake*, 125 Cal. 6, 57 Pac. 664; *Santa Rosa Nat. Bank v. Barnett*, 125 Cal. 407, 58 Pac. 85; *Winona etc. Co. v. Bull*, 108 Cal. 1, 40 Pac. 1077.

6. *Mokelumne etc. Co. v. Woodbury*, 14 Cal. 265; *Blen v. Bear R. Co.*, 20 Cal. 602; *Smith v. Eureka Flour Mills*, 6 Cal. 1; *C. C.* 322.

7. *Kennedy v. Cal. Sav. Bank*, 101 Cal. 495, 35 Pac. 1039; *Wolf v. St. Louis Co.* 15 Cal. 319.

8. *Borland v. Haven*, 37 Fed. 394.

to every equitable owner of stock, although the same appears on the books in the name of another;¹ but also to every person who has advanced the installments or purchase money of stock in the name of a minor as long as the latter remains a minor, and to every guardian, or other trustee, who voluntarily invests any trust funds in the stock. [C. C. 322.] Trust funds in the hands of a guardian or trustee are not liable to this liability by reason of any such investment, nor must the person for whose benefit the investment is made be responsible in respect to the stock, until he becomes competent and able to control the same; but the responsibility of the guardian or trustee making the investment continues until that period. Stock held as collateral security² or by a trustee or in any other representative capacity does not make the holder thereof a stockholder, except in the cases above mentioned, so as to charge him with any proportion of the debts or liabilities of the corporation, but the pledgor, or the person or estate represented, is to be deemed the stockholder with respect to such liability. C. C. 322.

In corporations having no stock a similar liability for the debts of the corporation rests on each member equally. C. C. 322.

The expressed intention of the legislature is that the stockholders of every foreign corpo-

1. *Duke v. Huntington*, 130 Cal. 272, 62 Pac. 511; see also *Moore v. Boyd*, 74 Cal. 167, 15 Pac. 670.

2. *Borland v. Nevada Bank*, 99 Cal. 89, 83 Pac. 787; if no price is fixed, the transfer is for security, and not a sale.

ration doing business within this state shall bear the same liability as is provided for the stockholder of California corporations. C. C. 322.

SECTION 185—DEFENSES, PAYMENT AND SET-OFF.

The creditors' right against the stockholders is conditioned only, that there must be a subsisting debt against the corporation. Whatever satisfies or extinguishes the debt as to the corporation, satisfies or extinguishes it as to the stockholder [Young v. Rosenbaum, 39 Cal. 646], because a creditor is only entitled to one satisfaction of his debt. But a suspension of the remedy against the corporation does not extinguish the debt and therefore does not affect the liability of the stockholder [*Id.*], accordingly a judgment against the corporation does not extinguish, suspend or merge the liability of the stockholders. *Id.* See section 181, *supra*.

Whenever any part of the debt of a corporation is paid either by it¹ or by a stockholder, such payment extinguishes the debt pro tanto, so that a stockholder is only liable for his share of so much of the debt as remains after such payments are deducted. San Jose Sav. Bank v. Pharis, 58 Cal. 380; Young v. Rosenbaum, 39 Cal. at 654.

Under the corporation act of 1853, allowing a creditor to obtain full satisfaction of his

1. Partridge v. Butler, 113 Cal. 326, 45 Pac. 678; debt reduced by an account stated.

debt from a single stockholder [see Sec. 182, *supra*], a release to a stockholder of that stockholder's liability, released the corporation and all the other stockholders to the same amount. It operated as an extinguishment *pro tanto*, because it destroyed the right of the corporation and the other stockholders to obtain contribution from the released one. *Prince v. Lynch*, 38 Cal. 528.

Such a release would have no effect to release or extinguish any part of the debt of corporations organized or existing under the codes, for the stockholder is only liable to each creditor for his proportion of that creditor's debt, not for his proportion of all the corporation's debts. See Sec. 182, *supra*. Compare *Larrabee v. Baldwin*, 35 Cal. 155.

If any stockholder pays his proportion of any debt incurred by the corporation and for which he is liable, he is relieved from any further personal liability for such debt [C. C. 322], and if an action has been already brought it must be dismissed, as to him, on his paying his share of the costs. C. C. 322.

A stockholder, therefore, can at any time, before or after insolvency of the corporation, pay his *pro rata* to any creditor and free himself from further liability to that creditor [Welch v. Sargent, 127 Cal. 72, 59 Pac. 319.] But a stockholder who, although intending to pay this liability, pays the money to the president or other officer of the corporation for that purpose, does not release himself. The money, while in the hands of such officer,

is the money of the stockholder, not of the corporation, and so does not extinguish any part of the corporation's debt. *Knowles v. Sandercock*, 107 Cal. 629, 40 Pac. 1047.

Any defense in the nature of a set-off that the corporation might assert in an action against it to collect the debt, may be asserted by the stockholder when sued for his statutory liability. *Sonoma Valley Bank v. Hill*, 59 Cal. 107.

SECTION 186—SAME—WAIVER.

The stockholder's statutory liability is a right created by law in favor of creditors. Any creditor can, if he will, contract to waive his rights against the stockholders. [*Wells v. Black*, 117 Cal. 157, 48 Pac. 1090.] Whether a creditor intends to waive his rights is purely a question of contract. In *United States v. Stanford*, 16 Sup. Ct. Rep. 577, a celebrated case, it was decided that congress, in authorizing the issuance of subsidy bonds to the Pacific railroads to aid in their construction, intended to waive the individual liability of the stockholders, and had done so.

But a stockholder who pleads a contract by the creditor to waive the statutory liability, must prove such waiver. The fact that a depositor in a savings bank has signed a pass book and the bank's "signature" book, both of which contain a printed agreement to waive the stockholder's liability, does not prove that the depositor contracted so to do. In the

absence of further proof, such signing will not be construed as intending to make a contract of waiver. *Wells v. Black*, 117 Cal. 157, 48 Pac. 1090.

CHAPTER XXI.

PROMOTERS.

SEC. 187—NATURE OF RELATION TO THE CORPORATION.

SEC. 188—PROMOTERS' CONTRACTS.

SECTION 187—NATURE OF RELATION TO THE CORPORATION.

A promoter is one who by his active endeavors assists in procuring the formation of a corporation and subscriptions to its shares, whether he afterward becomes connected with the corporation or not. [Mission Co. v. Flash, 97 Cal. 610, 32 Pac. 600.] A promoter is considered in law as occupying a fiduciary relationship toward the corporation from the moment he engages in its formation. [Mission Co. v. Flash, 97 Cal. 610, 32 Pac. 600; Burbank v. Dennis, 101 Cal. 90, 35 Pac. 444.] Any concealment of material facts, or other fraud by which the promoter, while such, makes a profit out of his dealings with the corporation, renders him liable to account to it for such profit. [*Id.*]

Providing he acts honestly, and faithfully discloses to the others about to enter the corporation all material knowledge which affects the judiciousness of the purchase, a promoter can sell to the corporation any land or prop-



erty he may own or has an interest in, other than that acquired as an agent of the corporation, and can charge any price that the corporation or the incorporators see fit to pay. *Id.* Also *Kellerman v. Maier*, 116 Cal. 416, 48 Pac. 377.

But out of his fiduciary position he shall make no profit. All profits made out of property bought by him with the corporation's money, belong to the corporation. [*Id.*] If the promoter defrauds the corporation in any sale, such sale may be set aside and the corporation can recover compensation for any loss it has sustained. [*Id.*]

Any property conferred on the promoters or agreements made with them intended for the benefit of the corporation, inure to it upon its creation, irrespective of any agreement or want of agreement to that effect.¹ A grant of a franchise to certain persons on condition that they incorporate, is a grant to the corporation.² By operation of law, the franchise passes from the corporators to the corporation the moment it comes into being.³ An agreement in the subscription to stock to pay to a certain named person makes that person an agent of all the incorporators before organization, and of the corporation after organization. Such person is then liable to

1. *San Joaquin Co. v. West*, 91 Cal. 399, 29 Pac. 785; *Spring Valley W. W. v. San Francisco*, 22 Cal. 434; *San Francisco v. Spring Valley W. W.*, 48 Cal. 493.

2. *Spring Valley W. W. v. San Francisco*, 22 Cal. 434; *San Francisco v. Spring Valley W. W.*, 48 Cal. 493.

3. *Id.*

the corporation for moneys had and received.⁴ He is not, however, a trustee and the money in his hands is not a trust fund. *San Joaquin County v. West*, 94 Cal. 399, 29 Pac. 785.

For torts committed by the incorporators or promoters in creating the corporation, but before it is actually created, the corporation is not liable. *Berry v. S. F. & N. P. R. R. Co.*, 50 Cal. 435.

SECTION 188—PROMOTER'S CONTRACTS.

The promoters are not the corporation and their contracts are not its contracts,⁵ but if those contracts are originally made for the corporation, the corporation can, after it comes into existence, adopt them as its own. *Scadden Flat etc. Co. v. Scadden*, 121 Cal. 33, 53 Pac. 440.

Any acts manifesting an intention to accept the consideration of such a contract are evidence of adoption. If the corporation accepts the benefits of a third party's contract with its promoters,⁶ the corporation has adopted the contract and can sue and be sued thereon. *Hawkins v. Mansfield etc. Co.*, 52 Cal. 513.

But if the corporation refuses to adopt a contract of its promoters, it cannot be sued on such contract. A contract by a promoter to give certain shares to a person when the corporation should be organized, cannot be

4. *San Joaquin Co. v. West*, 94 Cal. 399, 29 Pac. 785.

5. *Morrison v. Gold Mt. Co.*, 52 Cal. 306; *Hawkins v. Mansfield etc. Co.*, 52 Cal. 513; *Scadden Flat etc. Co. v. Scadden*, 121 Cal. 33, 53 Pac. 440.

6. *Scadden Flat etc. Co. v. Scadden*, 121 Cal. 33, 53 Pac. 440. *Chater v. San Francisco Sugar Co.*, 19 Cal. 219.

enforced against the corporation. [Hawkins *v. Mansfield etc. Co.*, 52 Cal. 513.] And a contract between the promoters that each should have a certain number of shares, after organization, does not bind the corporation. *Morrison v. Gold. Min. Co.*, 52 Cal. 306.

CHAPTER XXII.

DE FACTO CORPORATIONS.

SEC. 189—HOW CREATED.

SEC. 190—POWERS AND LIABILITIES.

SEC. 191—ESTOPPEL TO DENY INCORPORATION.

SECTION 189—HOW CREATED.

"A partnership or a joint-stock company is not the necessary result of an abortive attempt to organize a corporation." *Blanchard v. Kaull*, 44 Cal. 440.

When individuals have made a bona fide attempt to incorporate and then do business as a corporation, claiming to be such, the corporation is one "de facto."¹ The prerequisites to a "de facto" existence are (a) a general law under which incorporation can be had; (b) an attempt in good faith to comply therewith and to organize as a corporation; (c) doing business as a corporation.

When these prerequisites exist, the result is a de facto corporation,² whose due incorporation or right to exercise corporate powers can-

1. *Los Angeles Holiness Band v. Spiers*, 126 Cal. 541, 58 Pac. 1049; *Lakeside etc. Co. v. Crane*, 80 Cal. 181, 22 Pac. 76; *Golden Gate Co. v. Hendy Works*, 82 Cal. 184, 23 Pac. 45; *People v. La Rue*, 67 Cal. at 530, 8 Pac. 84; *Bakersfield Hall Asso. v. Chester*, 55 Cal. 98; *Stockton etc. Co. v. Stockton etc. R. R. Co.*, 45 Cal. 680; *Ron-dell v. Fay*, 32 Cal. 354; *Dannebroge etc. Co. v. Allmont*, 26 Cal. 296.

2. *Id.*

not be inquired into collaterally in any private suit to which such de facto corporation may be a party.¹

Such an inquiry can only be had at suit of the state on information of the attorney general; but even such a suit shall not be brought if after attempting to organize in good faith as a corporation the company has for ten consecutive years done business claiming to be such. C. C. 358.

If the organizers intend, as far as their knowledge permits, to comply with the law as to incorporation, and act accordingly, they have made a bona fide attempt to incorporate and can claim in good faith to be a corporation. *Bakersfield Hall Asso. v. Chester*, 55 Cal. 98; *Rondell v. Fay*, 32 Cal. 354.

If while making such claim, the company or association pursues corporate forms of action, styles itself a corporation in its business dealings [*Martin v. Deetz*, 102 Cal. 55, 36 Pac. 368], or is recognized as such in the business community [*Lakeside etc. Co. v. Crane*, 80 Cal. 181, 22 Pac. 76], it is "doing business as a corporation" and is one de facto. *L. A. etc. Band v. Spiers*, 126 Cal. 541, 58 Pac. 149; *Oroville etc. R. R. Co. v. Plumas Co.*, 37 Cal. 354.

That the company has been "doing business as a corporation" is a fact, which, like character, is to be proved by reputation and not by

1. C. C. 358. See cases in preceding notes; also Chap. III, *supra*.

the direct statement of a witness. *People v. Dole*, 122 Cal. 486, 55 Pac. 581.

If, however, there were no meetings of the stockholders or directors, no by-laws adopted, no certificates of shares issued, no seal adopted or used, no records or minutes kept, and no corporate acts of any character done, the company is not even *de facto* a corporation. It has no legal existence whatever as an entity, and a deed to it as such, is a nullity. [*Wall v. Mines*, 130 Cal. 27, 62 Pac. 386; *McCallion v. Hibernia etc. Soc.*, 70 Cal. 163, 12 Pac. 114.] It has no powers or liabilities as a corporation—it is not recognized in law as a being, and its existence can be put in issue collaterally, in any suit to which it may be a party. *People v. Volcano etc. Co.*, 100 Cal. 87, 34 Pac. 522.

SECTION 190—POWERS AND LIABILITIES.

A *de facto* corporation has all the powers, duties, rights and liabilities of a legally organized corporation, except in respect to an action by the state at suit of the attorney-general to restrain it from acting as a corporation. In all other acts or actions, either as against a private person or as against the state,¹ the law recognizes it and treats it in all respects as a legally created corporation.² It can sue or be sued as a corporation;³ it can contract

1. *People v. La Rue*, 67 Cal. 526, 8 Pac. 84; *City of Los Angeles v. State Loan Co.*, 109 Cal. 396, 41 Pac. 149, tax case.

2. *People v. La Rue*, 67 Cal. 526, 8 Pac. 84; *People v. Montecito W. Co.*, 97 Cal. 276, 32 Pac. 236.

3. *Oakland etc. Co. v. Dameron*, 67 Cal. 663, 8 Pac. 595; *Fresno etc. Co. v. Warner*, 72 Cal. 379, 14 Pac. 37; *First Baptist Church v. Branham*, 90 Cal. 22, 27 Pac. 60.

as a corporation and can likewise take, hold and alienate property.⁴ Deeds to it and from it are as valid as if it were in all respects, what it purports to be *i. e.* a *de jure* corporation. See Chap. III, *supra*.

SECTION 191—ESTOPPEL TO DENY INCORPORATION.

Cases arise when persons have dealt with others, who claim to be officers or agents of a corporation and have in those dealings recognized the corporation as such. In such cases, those who have dealt with the corporation as being such, even though it has no legal existence *de facto* or *de jure*, are estopped to deny it is a corporation. *Perkins v. Fish*, 121 Cal. 317, 53 Pac. 901.

The estoppel is not based on the fact that the company is or is not a *de facto* corporation, but on the fact that the person who has dealt with it as a corporation shall not be allowed to escape the legal consequences of his dealings by asserting in court a fact, the truth of which he impliedly denied when he entered into his obligations. *Meyer v. Bishop*, 129 Cal. 204, 61 Pac. 919.

One who borrows from a corporation cannot defeat a recovery by alleging the company is not a corporation. *Grangers Business Ass'n v. Clark*, 67 Cal. 634, 8 Pac. 445; *Bank of Shasta v. Boyd*, 99 Cal. 604, 34 Pac. 337. One who has contracted with a corporation

4. *Golden State Co. v. Hendy Works*, 82 Cal. 184, 23 Pac. 45; *Boyle v. San Diego L. and T. Co.*, 46 Fed. 709; *People v. La Rue*, 67 Cal. 526, 8 Pac. 84.

and received the benefit of its performance, cannot defeat an action by the corporation on the contract, by alleging its want of power to contract or its want of legal existence. *Camp v. Land*, 122 Cal. 167, 54 Pac. 839; *Fresno etc. Co. v. Warner*, 72 Cal. 379, 14 Pac. 37; *Yancy v. Morton*, 94 Cal. 558, 29 Pac. 1111; *Meyer v. Bishop*, 129 Cal. 204, 61 Pac. 919.

Those who hold themselves out as a corporation in their contracts or dealings, and are sued as a corporation, are also estopped to deny their existence as such. Thus, a partnership which contracts as a corporation is liable as a corporation on the contract. *Reid v. F. W. Kreling's Son's Co.*, 125 Cal. 117, 57 Pac. 773.

If, however, those who act as a corporation and are not, induce another, by fraud, to deal with them as such, that other is not estopped, in any action growing out of such dealings, from denying the existence of the corporation. *Perkins v. Fish*, 121 Cal. 317, 53 Pac. 901.

CHAPTER XXIII.

FOREIGN CORPORATIONS.

SEC. 192—RIGHT TO DO BUSINESS HERE.

SEC. 193 — PHRASE "DOING BUSINESS WITHIN THE STATE" DEFINED.

SEC. 194—REGULATION—IN GENERAL.

SEC. 195—ACTIONS BY OR AGAINST FOREIGN CORPORATION.

SEC. 196—SAME—THE RIGHT OF ACTION DENIED.

SEC. 197—SAME—RIGHT TO PLEAD STATUTE OF LIMITATION.

SECTION 192—FOREIGN CORPORATIONS—RIGHT TO DO BUSINESS HERE.

Foreign corporations doing business in California do it only by comity, and comity is limited by the public policy of the state. Such policy may be inferred from the state's general attitude toward foreign corporations or from positive enactment. *Williams v. Gold Hill Mg. Co.*, 96 Fed. 454.

There is no doubt that the legislature, as long as it does not conflict with the state constitution, has power to prescribe any regulations it sees fit, as a condition under which foreign corporations can do business here. There is nothing in the United States constitution to forbid it, for corporations are not citizens within the meaning of its declaration [Art. IV, Sec. 2], that the citizens of each

state shall be entitled to all the privileges and immunities of citizens in the several states. *City and County of S. F. v. Liverpool etc. Co.*, 74 Cal. 113, 15 Pac. 380.

A state may forbid foreign corporations to do business or acquire property within its borders, or may confer such right and limit it by prescribing conditions precedent to its exercise. *Barling v. Bank of B. N. A.*, 50 Fed. 260.

The California constitution [Art. XII, Sec. 15] provides that no corporation organized outside the limits of this state shall be allowed to transact business within this state on more favorable conditions than are prescribed by law to similar corporations organized under the laws of this state. This is a declaration of public policy binding on all foreign corporations that come here to do business, and it means that the penalties and liabilities imposed by California's laws on corporations, directors, officers and stockholders enter into every contract, conveyance or power made or given by any foreign corporation in the course of its business dealings in the state. [*Williams v. Gold Hill M'g. Co.*, 96 Fed. 454.] A statute of the state [Stats. 1880 p. 131] providing that leases of the mining ground of any mining corporation can only be made with the consent of the stockholders, is intended to apply to all corporations, foreign or domestic, doing business here, because it is a declaration of public policy. [*Williams v. Gold Hill M'g. Co.*, 96 Fed. 454.] A foreign

railroad corporation coming here to engage in the business of a common carrier, must allow the stop-over privilege to its passengers, because the Civil Code [C. C. 490] provides that "every railroad corporation" must so allow, and foreign corporations do business here only pursuant to the laws of the state. [Robinson v. So. Pac. Co., 105 Cal. 526, 38 Pac. 94, 722.] As the legislature has power to amend or alter all laws regulating corporations [C. C. 404 (old Sec. 387)], it would seem to be immaterial whether the regulation is enacted before or after the foreign corporation enters the state, as long as no vested rights are impaired. [C. C. 404.] An act requiring foreign insurance corporations now doing business in the state to pay a portion of their income to the city or county in which their place of business is located [Stats. 1885, Chap. 15], violates the state constitution [Art. XI, Sec. 12], since the act imposes a tax. S. F. v. Liverpool etc. Co., 74 Cal. 113, 15 Pac. 380; see sec. 193, *post*.

The liability of each stockholder of a corporation formed under the laws of any other state or territory of the United States, or of any foreign country, and doing business within this state, is the same as the liability of a stockholder of a corporation created under the constitution and laws of this state [C. C. 322], and all the penal liabilities of directors, officers or agents for making or publishing false reports, prospectuses and subscription

lists, and for hampering legislative investigation [Pen. C. 557-572], are expressly made applicable to foreign corporations. Pen. C. 571.

These are, again, declarations of public policy. Whether or not they are enforceable against foreign corporations depends on the question whether they are regulations of the business dealings of the corporation or regulations of its internal affairs; if of the former they are enforceable,¹ if of the latter they are beyond the power of the legislature.²

SECTION 193—PHRASE, "DOING BUSINESS WITH- IN THE STATE," DEFINED.

A foreign corporation is not "doing business" within a state unless it does a substantial part of its business there; an isolated act is not such.³ Acts of selling, leasing or mortgaging are "doing business."⁴ So is the making of contracts. Statutes regulating such acts apply, therefore, to foreign corporations. But posting mining reports in the company's office is an internal regulation for the benefit of the stockholders and covers the internal affairs of the corporation.⁵ An act requiring such reports [Stat. 1880 p. 400] applies only to domestic

1. *Barling v. Bank Brit. N. A.*, 50 Fed. 260; *City & County S. F. v. Liverpool etc. Co.*, 74 Cal. 113, 15 Pac. 380; *Williams v. Gold Hill Min. Co.*, 96 Fed. 454; *Robinson v. So. Pac. Co.*, 105 Cal. 526, 89 Pac. 94, 722.

2. *Miles v. Woodward*, 115 Cal. 308, 46 Pac. 1076; *Williams v. Gold Hill Min. Co.*, 96 Fed. 454.

3. *Doe v. Springfield Boiler Co.*, 104 Fed. 684.

4. *Williams v. Gold Hill Min. Co.*, 96 Fed. 454.

5. *Miles v. Woodward*, 115 Cal. 308, 46 Pac. 1076.

corporations. *Miles v. Woodward*, 115 Cal. 308, 46 Pac. 1076.

Any act which places a burden or restriction on the conduct of the business of a corporation is a regulation of its power to do business. [*Id.*] Such an act applies to all corporations, domestic or foreign, doing business here. See Sec. 192, *supra*.

Though there is no decision in the state on the subject, it would seem that the statutory regulations regarding stockholders' liabilities and the penal liabilities of officers and agents [See Sec. 192, *supra*] are regulations of business dealings, rather than of internal affairs, and therefore within the power of the legislature to enact. In *McGowan v. McDaniel*, 111 Cal. 57, 43 Pac. 418, it is said that the stockholder's statutory liability is a burden imposed on the stockholder that has nothing whatever to do with the creation or formation of the corporation. That case decided that Sec. 322 C. C. imposing this liability applied to all corporations created either before or after the code. The same reasoning would declare it applied to foreign as well as domestic corporations. When the purpose of an act against foreign corporations is to raise revenue, whether it is a condition under which to do business or a tax is a difficult matter of statutory construction. *S. F. v. Liverpool etc. Co.*, 74 Cal. 113, 15 Pac. 380.

SECTION 194—REGULATION—IN GENERAL.

The act of April 1, 1872, Stats. p. 826, as amended by Stat. 1899 p. 111 (which act is now sections 405 and 406 C. C.), sections 618–624 of the Political Code, relating to foreign insurance corporations, Sec. 407 C. C. relating to foreign transportation companies, and the act of March 8, 1901, Stats, p. 108, together with the constitution, Art. XII, Sec. 15, and sections 557–572 of the Penal Code (considered in sections 192, *supra*) contain all the existing statutory conditions under which foreign corporations can do business here.

Section 405 Civil Code declares that every foreign corporation must within forty days of the time it commences to do business here file in the office of the secretary of state a designation of some person residing within the state upon whom process issued under any law of this state may be served. Such process may be served on the person so designated, or, in the event that no such person is designated, then on the secretary of state, and the service is a valid service on such corporation. [See Part II, *post*, for section in full.] As a reward for filing such a designation, the corporation can plead the California statutes of limitation [C. C. 406], and can prove its legal existence in any action by a copy of the designation certified by the secretary of state. C. C. 405.

[The full text of the acts relating to foreign insurance corporations and foreign corporations engaged in the business of common carriers in this state, is given in part II, *post*.]

It is now held that section 616, Political Code, alone controls the designation of agents by foreign insurance corporations and a designation as there provided, together with the insurance commissioner's certificate, allows the corporation the full rights of domestic corporations in all actions or proceedings, for sections 404-5 of the Civil Code do not apply to such corporations. *Harrigan v. Home Life Ins. Co.*, 128 Cal. 531, 58 Pac. 180; *Gutzeil v. Pennie*, 95 Cal. 598, 30 Pac. 836.

SECTION 195—ACTIONS BY OR AGAINST FOREIGN CORPORATIONS.

Foreign corporations can sue in California like any foreign or non-resident person.¹ [See section 1036, C. C. P., requiring security for costs.] By bringing suit they submit voluntarily to the jurisdiction of the court and so cure the objection of want of jurisdiction. [*Loaiza v. Sup. Court*, 85 Cal. 11, 24 Pac. 707.] Creditors of foreign corporations can sue in the courts of this state to recover stockholders' liability, whenever the law creating such liability makes it contractual and does not prescribe any particular remedy. *Russell v. Pac. Ry. Co.*, 113 Cal. 258, 45 Pac. 323; *Glenn v. Saxton*, 68 Cal. 353, 9 Pac. 420; *Ferguson v. Sherman*, 116 Cal. 169, 47 Pac. 1023; *Bank of Brit. N. A. v. Rindge*, 57 Fed. 279.

When, however, a foreign corporation is a defendant, as the corporation itself is not

¹ A complaint in an action by a foreign corporation should allege its power to sue. *Parks Canal etc. Co. v. Hoyt*, 57 Cal. 44.

within the state,¹ personal jurisdiction over it can only be obtained in one of two ways: (a) If it has designated a person on whom service is to be made,² by service on such person; (b) if it has not so designated, by service on its managing or business agent, secretary or cashier, resident within the state.³ By no other service can personal jurisdiction of the corporation be obtained.⁴ If a corporation has both a resident manager and an agent, service must be on the manager, not on the agent.⁵ A manager is a person of representative capacity and derivative authority; a solicitor or commission-broker is not a managing agent within the meaning of the statute.⁶

There is no statute of this state which gives to a foreign corporation a local or county residence, whereat alone it can be sued. It can be sued in any county the plaintiff elects.⁷

There is nothing in the United States statutes which forbids suits against national banks to be brought in the state courts.⁸

1. *Fenton v. Edwards & Johnson*, 126 Cal. 43, 58 Pac. 320; *Pierce v. So. Pac. Co.*, 120 Cal. 156, 47 Pac. 874, 52 Pac. 302.

2. *C. C. 405. Eureka etc. Co. v. Superior Ct.*, 66 Cal. 311, 5 Pac. 490.

3. *C. C. P. 411. Blanc v. Paymaster Mining Co.*, 95 Cal. 524, 30 Pac. 765; *Norton v. Atchison etc. R. R. Co.*, 61 Fed. 618.

4. *Blanc v. Paymaster Mining Co.*, 95 Cal. 524, 30 Pac. 765.

5. *Sobrio v. Manhattan Life Ins. Co.*, 72 Fed. 566.

6. *Doe v. Springfield Boiler Co.*, 104 Fed. 684; *Denver etc. R. R. Co. v. Roller*, 100 Fed. 738.

7. *Thomas v. Placerville etc. Co.*, 65 Cal. 600, 4 Pac. 641; see also *Fresno National Bank v. Superior Ct.*, 83 Cal. 491, 24 Pac. 157; *Denver etc. R. R. Co. v. Roller*, 100 Fed. 738.

8. *Fresno National Bank, v. Superior Ct.*, 83 Cal. 491, 24 Pac. 157.

SECTION 196—SAME—THE RIGHT OF ACTION DENIED.

Foreign corporations doing business here and not filing the designation of an agent required by section 405, Civil Code, cannot maintain or defend any action in this state until such designation be filed. This statute only applies to the state courts, for the legislature could not, if it would, impair the jurisdiction of the federal courts. It only applies to actions in the state courts by or against corporations doing business here. It does not prevent foreign corporations from suing here on debts contracted outside the state. *Barling v. Bank of B. N. A.*, 50 Fed. 260.

The section of the Civil Code depriving a corporation of the right to sue in relation to property situated in a county wherein the corporation has not filed a copy of its articles of incorporation, manifestly does not apply to foreign corporations, for such corporations may have been created by special act or by statutes, not requiring articles to be filed.⁹

SECTION 197—SAME—RIGHT TO PLEAD STATUTE OF LIMITATION.

As foreign corporations, though having agents here, are always absent from the state, (*i. e.*, absent debtors,) without any statutory grant, such corporations never could plead a

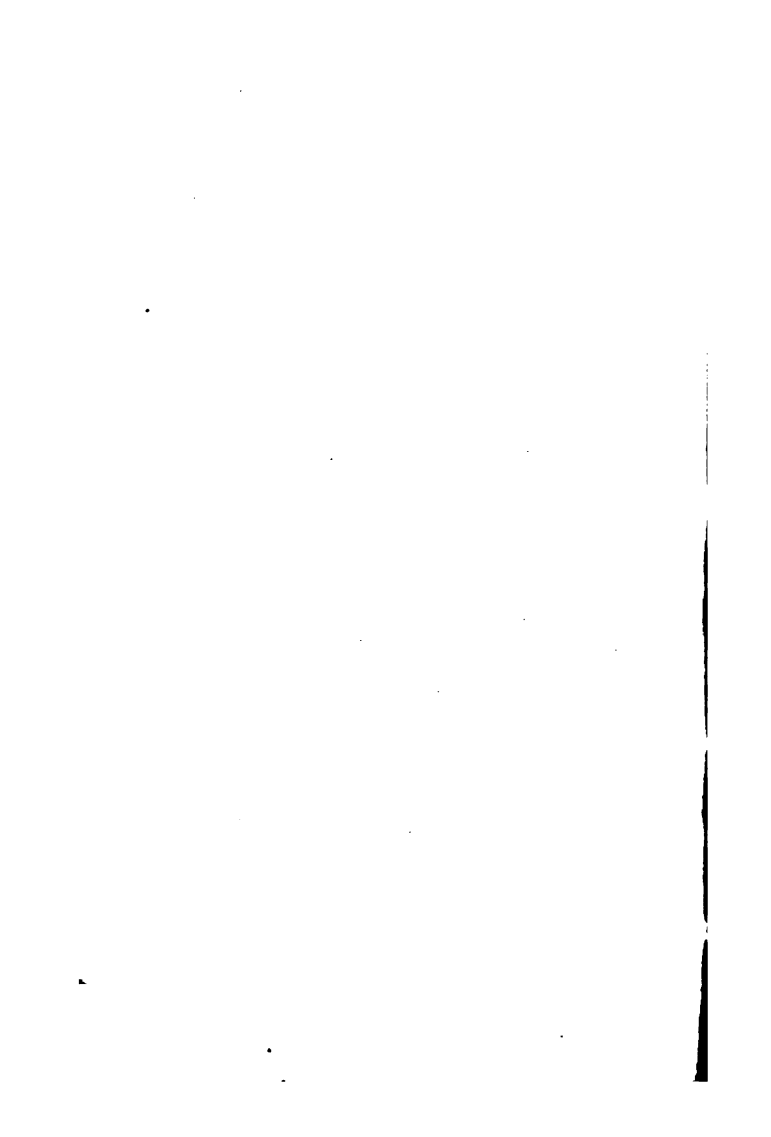
9. *Weeks v. Garibaldi etc. Co.*, 73 Cal. 599, 15 Pac. 302; *South Yuba W. & M. Co. v. Rosa*, 80 Cal. 333, 22 Pac. 222. [The 1901 amendment to this section [C. C. 299] removes this objection and the section as it now stands is intended to apply both to foreign and domestic corporations.]

statute of limitation.¹⁰ Section 406, Civil Code, providing that corporations designating an agent here can take advantage of the statutes of limitation, has been construed as conferring a right on such corporations, and not as attempting to deprive foreign corporations, that do not designate an agent, of any rights they antecedently had. The decision in *Pierce v. So. Pac. etc. Co.*, 120 Cal. 156, 47 Pac. 874, 52 Pac. 392, is correct, but the reasoning is not to be commended, for a foreign corporation that has a resident-manager [C. C. 405], openly doing business as such for the full period of limitation, can plead the statutes of limitation. *Lawrence v. Ballou*, 50 Cal. 258.

10. *Pierce v. So. Pac. Co.*, 120 Cal. 156, 47 Pac. 874, 52 Pac. 302.

PART II.

**General Corporation
Law.**



General Corporation Law.

CHAPTER I.—OF THE NATURE OF CORPORATIONS.

Definition.

Classification.

Corporations Sole.

Definition.

C. C. P. Sec. 17. Words used in this code in the present tense include the future as well as the present; words used in the masculine gender include the feminine and neuter; the singular number includes the plural, and the plural the singular; the word "person" includes a corporation as well as a natural person; * * * * *

Const. Art. XII, Sec. 4. The term "corporations," as used in this article, shall be construed to include all associations and joint-stock companies having any of the powers or privileges of corporations not possessed by individuals or partnerships; and all corporations shall have the right to sue and shall be subject to be sued, in all courts, in like cases as natural persons.

C. C. Sec. 283. A corporation is a creature of the law, having certain powers and duties of a natural person. Being created by the law, it may continue for any length of time which the law prescribes.

Classification.

C. C. Sec. 284. Corporations are either public or private. Public corporations are formed or organized for the government of a portion of the state; all other corporations are private.

C. C. Sec. 286. Private corporations may be formed for any purpose for which individuals may lawfully associate themselves.

Corporations Sole.

C.C. Sec. 602. Whenever the rules, regulations, or discipline of any religious denomination, society, or church so require, for the administration of the temporalities thereof, and the management of the estate and property thereof, it shall be lawful for the bishop, chief priest, or presiding elder of such religious denomination, society, or church to become a sole corporation, in the manner prescribed in this title, [C. C. Sec. 593-604] as nearly as may be, and with all the powers and duties, and for the uses and purposes in this title provided for religious incorporations, and subject to all the conditions, limitations and provisions in said title prescribed. Every corporation sole shall, however, for the purposes of the trust, have power to contract in the same manner and to the same extent as a natural person, and may sue and be sued, and may defend, in all courts and places, in all matters and proceedings whatever, and shall have authority to borrow money and give promissory notes therefor, and to secure the payment thereof by mortgage or other lien upon property, real or personal; to buy, sell, lease, mortgage, and in every way deal in real and personal property in the same manner that a natural person may, and without the order of any court; to receive bequests and devises for its own use or upon trusts to the same extent as natural persons may; and to appoint attorneys in fact. The articles of incorporation to be filed shall set forth the facts authorizing such incorporation, and declare the manner in which any vacancy occurring in the incumbency of such bishop, chief priest, or presiding elder is required by the rules, regulations, or discipline of such denomination, society, or church to be filled, which statement shall be verified by affidavit, and for proof of the appointment or election of such bishop, chief priest, or presiding elder, or of any succeeding incumbent of such corporation, it shall be sufficient to record with the clerk of the county in which such bishop,

chief priest, or presiding elder resides, the original or a copy of his commission, or certificates, or letters of election or appointment, duly attested; provided, all property held by such bishop, chief priest, or presiding elder shall be in trust for the use, purpose and behoof of his religious denomination, society, or church. The limitation in section five hundred and ninety-five shall not apply to corporations formed under this section, when the land is held or used for churches, hospitals, schools, colleges, orphan asylums, parsonages, or cemetery purposes. Any judge of the superior court in the county in which any corporation is formed under this chapter shall at all times have access to the books of such incorporation. Any corporation sole heretofore organized and existing under the laws of this state may elect to continue its existence under this title by filing a certificate to that effect, under its corporate seal and the hand of its incumbent, or amended articles of incorporation, in the form required by this title, and as prescribed by section two hundred and eighty-seven of this code; and from and after the filing of such certificate or amended articles, such corporation shall be entitled to the privileges and subject to the duties, liabilities and provisions in this title expressed.

CHAPTER II.—ATTRIBUTES OF CORPORATIONS.

Name.

Change of Name.

Residence.

The Right to Sue Qualified.

Place of Suit.

Practice and Procedure.

Name.

C. C. 296. Upon filing the articles of incorporation in the office of the county clerk of the county in which the principal business of the company is

to be transacted, and a copy thereof certified by the county clerk with the secretary of state, and the affidavit mentioned in the last section where such affidavit is required, the secretary of state must issue to the corporation, over the great seal of the state, a certificate that a copy of the articles containing the required statement of facts has been filed in his office, and thereupon the persons signing the articles and their associates and successors shall be a body politic and corporate, by the name stated in the certificate, and for the term of fifty years, unless it is, in the articles of incorporation, otherwise stated, or in this code otherwise specially provided; provided, however, that the secretary of state shall not file any copy of the copy of any articles, or issue any certificate of incorporation to any corporation, which articles set forth the corporate name of any corporation heretofore organized in this state, or file any copy of any articles, or issue any certificate of incorporation to any corporation existing at the time of filing said articles; which articles set forth a name so closely resembling the name of such corporation as will tend to deceive.

C. C. Sec. 357. The misnomer of a corporation in any written instrument does not invalidate the instrument, if it can be reasonably ascertained from it what corporation is intended.

Change of Name.

Const. Art. IV, Sec. 25. The legislature shall not pass local or special laws in any of the following enumerated cases, that is to say:

* * * * *

Sub. 6. Changing the names of places.

* * * * *

C. C. P. Sec. 1276. All applications for change of names must be made to the superior court of the county where the person whose name is proposed to be changed resides, by petition, signed by such person; and if such person is under

twenty-one years of age, if a male, and under the age of eighteen years, if a female, by one of the parents, if living, or if both are dead, then by the guardian; and if there is no guardian, then by some near relative or friend. The petition must specify the place of birth and residence of such person, his or her present name, the name proposed, and the reason for such change of name; and must, if the father of such person is not living, name, as far as known to the petitioner, the near relatives of such person, and their place of residence. Any religious, benevolent, literary, scientific, or other corporation, or any corporation bearing or having for its name, or using or being known by the name of, any benevolent or charitable order or society, may, by petition, apply to the superior court of the county in which its articles of incorporation were originally filed, or in which the property of such corporation is situated, for a change of its corporate name. Such petition must be signed by a majority of the directors or trustees of the corporation, and must specify the date of the formation of the corporation, its present name, the name proposed, and the reason for such change of name. Upon filing such petition on behalf of such corporation, the same proceedings may be had as upon applications for changes of names of natural persons.

Residence.

Sec. 321a. Every corporation may change its place of business from one place to another in the same county, or from one city or town to another city or town in the same county, or from one county to another county within this state. Before such change is made, the consent, in writing, of the holders of two-thirds of the capital stock must be obtained and filed in the office of the corporation. When such consent is obtained and filed, notice of the intended removal or change must be published, at least once a week for three successive weeks, in some newspaper.

published in the county wherein said principal place of business is situated, if there is one published therein; if not, in a newspaper of an adjoining county, giving the name of the county or city where it is situated, and that to which it is intended to remove it. A copy of such consent, certified by the secretary of such corporation, together with a certified copy of the resolution of the board of directors directing such publication, and an affidavit showing the due publication of such notice, must be filed in the office of the county clerk of the county to which such place of business is changed. From the time of filing such papers, the place of business of such corporation is deemed to have been changed to such county.

The Right to sue qualified.

C. C. Sec. 299. No corporation hereafter formed must purchase, locate, or hold property, in any county in this state, other than the county in which its original articles of incorporation are filed, without filing a copy of the copy of its articles of incorporation filed in the office of the secretary of state, duly certified by such secretary of state, in the office of the county clerk of the county in which such property is situated, within sixty days after such purchase or location is made. Every corporation now in existence, whether formed under the provisions of this code or not, must, within ninety days after the passage of this section, file such certified copy of the copy of its articles of incorporation in the office of the county clerk of every county in this state in which it holds any property, except the county where the original articles of incorporation are filed; and if any corporation hereafter acquires any property in a county other than that in which it now holds property, it must, within ninety days thereafter, file with the clerk of such county such certified copy of the copy of its articles of incorporation. The copies filed with the several county clerks, and certified copies thereof, have the same force

and effect in evidence as the originals. Any corporation failing to comply with the provisions of this section cannot maintain or defend any action or proceeding in relation to such property, its rents, issues, or profits, until such articles of incorporation, and such certified copy of its articles of incorporation, and such certified copy of the copy of its articles of incorporation, are filed at the places directed by the general law and this section; provided, that all corporations are liable in damages for any and all loss that may arise by the failure of such corporation to perform any of the foregoing duties within the time mentioned in this section; and provided further, that the said damages may be recovered in an action brought in any court of this state of competent jurisdiction, by any party or parties suffering the same.

Place of Suit.

Const. Art. XII, Sec. 16. A corporation or association may be sued in the county where the contract is made or is to be performed, or where the obligation or liability arises, or the breach occurs; or in the county where the principal place of business of such corporation is situated, subject to the power of the court to change the place of trial as in other cases.

Practice and Procedure.

C. C. P. Sec. 411. The summons must be served by delivering a copy thereof, as follows:

1. If the suit is against a corporation formed under the laws of this state, to the president or other head of the corporation, secretary, cashier, or managing agent thereof;

2. If the suit is against a foreign corporation, or a non-resident joint stock company, or association, doing business and having a managing or business agent, cashier, or secretary within this state, to such agent, cashier, or secretary; * * *

C. C. P. Sec. 446. Every pleading must be subscribed by the party or his attorney; and when

the complaint is verified, or when the state, or any officer of the state, in his official capacity, is plaintiff, the answer must be verified, unless an admission of the truth of the complaint might subject the party to a criminal prosecution, or, unless an officer of the state, in his official capacity, is defendant. In all cases of a verification of a pleading, the affidavit of the party must state that the same is true of his own knowledge, except as to the matters which are therein stated on his information or belief, and as to those matters that he believes it to be true; and where a pleading is verified it must be by the affidavit of a party, unless the parties are absent from the county where the attorney has his office, or from some cause unable to verify it, or the facts are within the knowledge of his attorney or other person verifying the same. When the pleading is verified by the attorney, or any other person except one of the parties, he must set forth in the affidavit the reasons why it is not made by one of the parties. When a corporation is a party, the verification may be made by any officer thereof.

CHAPTER III.—CREATION.

Created by General Laws.

State Not to Loan Its Credit.

Formal Requisites of Creation.

Fees for Filing Articles of Incorporation.

Proof of Incorporation.

Amending Articles of Incorporation.

Defective Incorporation.

Collateral Attacks.

Created by General Laws.

C. C. Sec. 289. The instrument by which a private corporation is formed is called "Articles of Incorporation."

Const. Art. XII, Sec. 1. Corporations may be formed under general laws, but shall not be created by special act. All laws now in force in this state concerning corporations, and all laws that may be hereafter passed pursuant to this section may be altered from time to time or repealed.

State not to Loan Its Credit.

Const. Art. XII, Sec. 13. The state shall not in any manner loan its credit, nor shall it subscribe to, or be interested in the stock of any company, association, or corporation.

Formal Requisites of Creation.

C. C. Sec. 285. Private corporations may be formed by the voluntary association of any five or more persons, in the manner prescribed in this article. A majority of such persons must be residents of this state.

C. C. Sec. 292. The articles of incorporation must be subscribed by five or more persons, a majority of whom must be residents of this state, and acknowledged by each before some officer authorized to take and certify acknowledgments of conveyances of real property.

C. C. 290. Articles of incorporation must be prepared, setting forth:

- (1) The name of the incorporation.
- (2) The purpose for which it is formed.
- (3) The place where its principal business is to be transacted.

- (4) The term for which it is to exist, not exceeding fifty years.

- (5) The number of its directors or trustees, which shall not be less than five, and the names and residence of those who are appointed for the first year; provided, that the corporate powers, business, and property of corporations formed or to be formed for the purpose of erecting and managing halls and buildings for the meetings and accommodation of several lodges or societies of any benevolent or charitable order or organization, and in connection therewith the leasing of stores and offices in such building or buildings for other purposes, may be conducted, exercised, and controlled by a board of not less than five or more than fifty directors, to be chosen from among the stockholders of such corporation, or from among the members of such order or organization; and provided, also, that at any time during the existence of corporations for profit, other than those of the character last hereinabove provided for, the number of the directors may be increased or diminished, by a majority of the stockholders of the corporation, to any number not less than five, who must be members of the corporation; whereupon, a certificate stating the number of directors must be filed, as provided for in section two hundred and ninety-six for the filing of the original articles of incorporation; and provided, also; that the corporate powers, business, and property of corporations formed or to be formed for social purposes, and not directly for profit, may be exercised, conducted, and controlled by a board, consisting of such number of directors as may be in the constitution or by-laws provided;

and corporations so formed may, in their constitution or by-laws, provide for the length of time that the directors, or any number thereof, shall act, and may, in like manner, provide that certain directors, or a certain number of the board of directors, to be selected by the corporation or the board of directors, in the mode and manner provided in the constitution or by-laws, shall act for any specified length of time, or otherwise, as shall be in the constitution or by-laws set forth.

(6.) The amount of its capital stock, and the number of shares into which it was divided.

(7.) If there is a capital stock, the amount actually subscribed, and by whom.

Fees for Filing Articles of Incorporation.

Pol. C. Sec. 416. The secretary of state, for services performed in his office, must charge and collect the following fees:

1. For a copy of any law, resolution, record, or other document or paper on file in his office, twenty cents per folio.

2. For comparing a copy of any law, resolution, record, or other document or paper with the original, or the certified copy of the original, on file in his office, five cents per folio.

3. For affixing certificate and seal of state, unless otherwise provided for, two dollars.

4. For filing articles of incorporation, if the capital stock amounts to twenty-five thousand dollars or less, fifteen dollars; if the capital stock amounts to over twenty-five thousand dollars, and not over seventy-five thousand dollars, twenty-five dollars; if the capital stock amounts to over seventy-five thousand dollars, and not over two hundred thousand dollars, fifty dollars; if the capital stock amounts to over two hundred thousand dollars, and not over five hundred thousand dollars, seventy-five dollars; if the capital stock is over five hundred thousand dollars, and not over one million dollars, one hundred dollars; if the capital stock is over one million dollars, one hundred

and fifty dollars; for filing articles of incorporation without capital stock, except co-operative associations, five dollars; for filing articles of incorporation of co-operative associations, formed under the act of eighteen hundred and ninety-five, and acts supplementary thereto or amendatory thereof, fifteen dollars.

5. For recording articles of incorporation, twenty cents per folio.

6. For issuing certificate of incorporation, three dollars.

7. For filing certificate of increase of capital stock, five dollars for every ten thousand dollars, or fraction thereof of such increase.

8. For filing certificate of decrease of capital stock, five dollars.

9. For filing notice of removal of principal place of business, five dollars.

10. For filing amended articles of incorporation, unless otherwise provided for, five dollars.

11. For filing certificate of creation of bonded indebtedness, or increase or decrease thereof, five dollars.

12. For issuing certificate of increase or decrease of capital stock, three dollars.

13. For filing certificate on continuance of existence, five dollars.

14. For issuing certificate of continuance of existence, three dollars.

15. For filing claim to trademark, and issuing certificate of filing, five dollars.

16. For issuing certificate of filing of any document, not otherwise provided for, five dollars.

17. For filing certificate of increase or decrease of number of directors, five dollars.

18. For issuing certificate of increase or decrease of number of directors, three dollars.

19. For receiving and recording each official bond, five dollars.

20. For filing notice of appointment of agent, five dollars.

21. For each commission, passport, or other document signed by the governor and attested by the secretary of state (pardons, military commissions, and extradition papers excepted), five dollars.

22. For each patent for land issued by the governor, if for one hundred and sixty acres or less, one dollar; and for each additional one hundred and sixty acres, or fraction thereof, one dollar.

23. For issuing certificate of official character, two dollars.

24. For recording miscellaneous documents or papers, twenty cents per folio.

No member of the legislature or state officer shall be charged for any search relative to matters appertaining to the duties of their office; nor shall they be charged any fee for a certified copy of any law or resolution passed by the legislature relative to their official duties.

All fees collected by the secretary of state must, at the end of each month, be paid into the state treasury. Twenty-five hundred dollars of such monthly returns shall be credited to and constitute the state library fund, and the balance shall be paid into the general fund of the state.

An act to establish the fees of county, township, and other officers and of jurors and witnesses in this state.

[Approved March 28, 1895.]

Section 1. The following county, township, and other officers shall charge and collect the following fees:

COUNTY CLERK.

* * * * *

For filing and indexing articles of incorporation, one dollar.

* * * * *

Proof of Incorporation.

C. C. Sec. 297. A copy of any articles of incorporation filed in pursuance of this chapter, and

certified by the secretary of state, or by the county clerk of the county where the original articles shall have been filed, must be received in all the courts of this state, and other places, as prima facie evidence of the facts therein stated.

Amending Articles of Incorporation.

C. C. Sec. 362. Any corporation may amend its articles of incorporation by a majority of its board of directors or trustees, and by the written assent of the stockholders or members of such corporation, or the written assent of at least two-thirds of the subscribed stock, or the written majority of the members if there is no stock; and a copy of such articles of incorporation as thus amended, duly certified to by the president and secretary of the corporation, or by the directors or trustees of such corporation, in the office where the original articles of incorporation and a copy thereof, certified by the secretary of state, must be filed by the secretary of state at the time of so filing such copy of amended articles of incorporation, such corporation shall have all the powers, and it and the stockholders or members thereof are thereafter subject to the provisions of the original articles of incorporation, as if such amendment had been made in the original articles of incorporation. The existence of such corporation must be maintained by such amendment extended beyond the term of years in the original articles of incorporation. The original and amended articles of incorporation must together contain all the matters and provisions required by the law under which the original articles of incorporation were executed and filed. Nothing contained in this section must be construed to cure or amend any defect existing in any original articles of incorporation heretofore filed in that such articles did not set forth the matters required to make the same valid at the time of filing. If the assent of two-thirds of said stockholders, or of the majority of members where there is no capital stock, to such amendment has

not been obtained, a notice of the intention to make such amendment must first be published in some newspaper published in the county in which the principal place of business of the corporation is located, for fifteen days if in a daily, or five successive issues if in a weekly newspaper, before the filing of the proposed amendment. Nothing must be construed to authorize a corporation to diminish its capital

articles of incorporation prescribed, and executed in obedience of sections two hundred and ninety-two such original articles of incorporation to be presented to the clerk of a county in which the principal place of business is transacted, and the secretary shall issue a certificate of incorporation, and a certified copy of such original articles of incorporation, any stockholder or person owning shares in the corporation may petition the court in which said original articles of incorporation were filed for an order to set aside said articles of incorporation, and for a certified copy of the original articles of incorporation to be filed in the office of the secretary of state. The petition must be verified, and must show that such articles of incorporation were filed in error.

state clerk shall cause notice of the hearing of said petition to be published in a newspaper published in the county where such petition is filed. Upon the day set for hearing the petition the superior court may grant an order allowing such original articles of incorporation to be withdrawn, and a certified copy of the copy in the office of the secretary of state in the place thereof filed; and

the original articles of incorporation must be filed within ten days thereafter in the county in which the principal place of business is to be transacted, as stated in such articles of incorporation, and a certified copy of the order allowing such action must be filed with the certified copy in the office of the secretary of state, after which said corporation shall be entitled to all rights and privileges of a private corporation, and the title to any property it may have previously acquired shall not be affected by reason of the failure to file the original articles of incorporation in the first instance.

Collateral Attacks.

C. C. Sec. 358. If a corporation does not organize and commence the transaction of its business, or the construction of its works within one year from the date of its incorporation, or if, after its organization and commencement of its business, it shall lose or dispose of all of its property, and shall fail for a period of two years to elect officers and transact, in regular order, the business of said corporation, its corporate powers shall cease, and the said corporation may be dissolved at the instance of any creditor of the said corporation, at the suit of the state, on the information of the attorney-general, but the resumption of its business in good faith by such corporation prior to the commencement thereof shall be a bar to such suit. The due corporation of any company claiming in good faith to be a corporation under this part, and doing business as such, or its right to exercise corporate powers, shall not be inquired into collaterally in any private suit to which such de facto corporation may be a party; but such inquiry may be had at the suit of the state on information of the attorney-general; provided, however, as to any company claiming in good faith to be, and which has been doing business for ten consecutive years as a corporation, no such inquiry shall be made either by the state or by any person whatsoever.

CHAPTER IV—LEGISLATIVE CONTROL.

Legislature May Amend or Repeal Charter.

Method of Amending Charter.

Reorganization Under the Codes.

Visitorial Power of the State.

Extension of Term of Existence.

Legislature May Amend or Repeal Charter.

Const. Art. XII, Sec. 8. The exercise of the right of eminent domain shall never be so abridged or construed as to prevent the legislature from taking the property and franchises of incorporated companies and subjecting them to public use the same as the property of individuals, and the exercise of the police power of the state shall never be so abridged or construed as to permit corporations to conduct their business in such manner as to infringe the rights of individuals or the general well-being of the state.

Const. Art. XII, Sec. 1, p. 375, supra.

C. C. Sec. 404. The legislature may at any time amend or repeal this part, or any title, chapter, article, or section thereof, and dissolve all corporations created thereunder; but such amendment or repeal does not, nor does the dissolution of any such corporation, take away or impair any remedy given against any such corporation, its stockholders or officers, for any liability which has been previously incurred.

Method of Amending Charter.

C. C. 362, p. 380, supra.

Reorganization Under the Codes.

Const. Art. XII, Sec. 6. All existing charters, grants, franchises, special or exclusive privileges, under which an actual and bona fide organization shall not have taken place, and business been commenced in good faith, at the time of the adop-

tion of this constitution, shall thereafter have no validity.

C. C. Sec. 287. Any corporation existing on the first day of January, one thousand eight hundred and seventy-three, formed under the laws of this state, and still existing, which has not already elected to continue its existence, under the provisions of this code applicable thereto, may, at any time hereafter, make such election by the unanimous vote of all its directors, or such election may be made at any annual meeting of the stockholders or members, or at any meeting called by the directors expressly for considering the subject, if voted by stockholders representing a majority of the capital stock, or by a majority of the members, or may be made by the directors upon the written consent of that number of such stockholders or members. A certificate of the action of the directors, signed by them and their secretary, when the election is made by their unanimous vote, or upon the written consent of the stockholders or members, or a certificate of the proceedings of the meeting of the stockholders or members, when such election is made at any such meeting, signed by the chairman and secretary of the meeting, and a majority of the directors, must be filed in the office of the clerk of the county where the original articles of corporation are filed, and a certified copy thereof must be filed in the office of the secretary of state; and thereafter the corporation shall continue its existence under the provisions of this code, which are applicable thereto, and shall possess all the rights and powers, and be subject to all the obligations, restrictions, and limitations, prescribed thereby.

C. C. Sec. 288. No corporation formed or existing before twelve o'clock, noon, of the day upon which this code takes effect, is affected by the provisions of Part IV of Division I of this code, unless such corporation elects to continue its ex-

istence under it as provided in section 287; but the laws under which such corporations were formed and exist are applicable to all such corporations, and are repealed, subject to the provisions of this section.

Visitorial Power of the State.

C. C. Sec. 382. The attorney-general or district attorney, whenever and as often as required by the governor, must examine into the affairs and condition of any corporation in this state, and report such examination, in writing, together with a detailed statement of facts, to the governor, who must lay the same before the legislature; and for that purpose the attorney-general or district attorney may administer all necessary oaths to the directors and officers of any corporation, and may examine them on oath in relation to the affairs and condition thereof, and may examine the books, papers, and documents belonging to such corporation, or appertaining to its affairs and conditions.

C. C. Sec. 383. The legislature, or either branch thereof, may examine into the affairs and condition of any corporation in this state at all times; and for that purpose, any committee appointed by the legislature, or either branch thereof, may administer all necessary oaths to the directors, officers, and stockholders of such corporation, and may examine them on oath in relation to the affairs and condition thereof; and may examine the safes, books, papers, and documents belonging to such corporation, or pertaining to its affairs and condition, and compel the production of all keys, books, papers, and documents by summary process, to be issued on application to any court of record or any judge thereof, under such rules and regulations as the court may prescribe.

Extension of Term of Existence.

Const. Art. XII, Sec. 7. The legislature shall not extend any franchise or charter, nor remit the forfeiture of any franchise or charter of any

corporation now existing, or which shall hereafter exist under the laws of this state.

C. C. Sec. 401. Every corporation formed for a period less than fifty years, may, at any time, to the expiration of the term of its existence, extend such term to a period of fifty years from its formation. Such extension may be made at any meeting of the stockholders or members called by the directors for that purpose, considering the subject if voted by a majority of the stockholders or members representing two-thirds of the capital stock; or by a majority of two-thirds of the members; or may be made by the written assent of two-thirds of the stockholders or of stockholders representing two-thirds of the capital stock. A certificate of the extension of the term of the corporation, signed by the chairman and secretary of the meeting upon such vote, or upon such assent, must be signed by the chairman and secretary of the meeting and a majority of the directors, and be filed in the office of the county clerk where the original articles of incorporation were filed, and a certified copy thereof in the office of the secretary of state, and thereupon the term of the corporation is extended for the specified period.

C. C. Sec. 403. The provisions of this title are applicable to every corporation, unless such corporation is excepted from its operation, or unless a special provision is made in relation thereto inconsistent with some provision in this title, in which case the special provision prevails.

C.C. Sec. 401. Corporation in California, p. 386.
 The corporation formed for a period less than fifty years, may, at any time, to the expiration of the term of its existence, extend such term to a period of fifty years from its formation. Such extension may be made at any meeting of the stockholders or members called by the directors for that purpose, considering the subject if voted by a majority of the stockholders or members representing two-thirds of the capital stock; or by a majority of two-thirds of the members; or may be made by the written assent of two-thirds of the stockholders or of stockholders representing two-thirds of the capital stock. A certificate of the extension of the term of the corporation, signed by the chairman and secretary of the meeting upon such vote, or upon such assent, must be signed by the chairman and secretary of the meeting and a majority of the directors, and be filed in the office of the county clerk where the original articles of incorporation were filed, and a certified copy thereof in the office of the secretary of state, and thereupon the term of the corporation is extended for the specified period.

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Voluntary Dissolution.

C. C. P. Sec. 1227. A corporation may be dissolved by the superior court of the county where its principal place of business is situated, upon its voluntary application for that purpose.

C. C. P., Corporations in California, p. 387. 1228. The application must be in writing, and must set forth:

1. That at a meeting of the stockholders or members called for that purpose, the dissolution of the corporation was resolved upon by a two-third vote of all the stockholders or members;
2. That all claims and demands against the corporation have been satisfied and discharged.

two-thirds

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2. That all claims and demands against the corporation have been satisfied and discharged.

C. C. P. Sec. 1229. The application must be signed by a majority of the board of trustees, directors, or other officers having the management of the affairs of the corporation, and must be verified in the same manner as a complaint in a civil action.

C. C. P., Corporations in California, p. 387. 1230. If the clerk must give notice of the same court may order, but not less than fifty days, by publication in the county newspaper published in the county, or by other means.

posted in three of the principal public places in the county.

C. C. P. Sec. 1231. At any time before the expiration of the time of publication, any person may file his objections to the application.

C. C. P. Sec. 1232. After the time of publication has expired, the court may, upon five days' notice to the persons who have filed objections or without further notice, if no objections have been filed, proceed to hear and determine the application, and if all the statements therein made are shown to be true, must declare the corporation dissolved.

C. C. P. Sec. 1233. The application, notices, and proof of publication, objections (if there be any) and declaration of dissolution, constitute the judgment roll; and from the judgment an appeal may be taken, as from other judgments of the superior court.

Involuntary Dissolution.

C. C. P. Sec. 803. An action may be brought by the attorney-general, in the name of this state, upon his own information, for the purpose of obtaining a complaint of a private party, any person who usurps, intrudes into, or unlawfully holds or exercises any public office, civil or military, or any franchise within this state. And the attorney-general must bring the action, whenever he has reason to believe that any such office or franchise has been usurped, intruded into, or unlawfully held or exercised by any person, or when he is directed to do so by the governor. And if it is claimed that a corporation, either de jure or de facto, is exercising a franchise which it is not authorized to exercise, or is exercising corporate functions when not authorized to do so, such corporation must be made a party defendant.

Causes of Forfeiture.

Civil Code 358, p. 382, supra.

Defenses or Waiver of Grounds.

Const. Art. IV, Sec. 25.—The legislature shall not pass local or special laws in any of the following enumerated cases, that is to say:

- * * * * *
26. Remitting fines, penalties or forfeitures.
- * * * * *

Form of Judgment.

Constitution, Art. XII, Sec. 7, p. 385, supra.

C. C. P. Sec. 809. When a defendant, against whom such action has been brought, is adjudged guilty of usurping or intruding into, or unlawfully holding any office, franchise, or privilege, judgment must be rendered that such defendant be excluded from the office, franchise, or privilege, and that he pay the costs of the action. The court may also, in its discretion, impose upon the defendant a fine not exceeding five thousand dollars, which fine, when collected, must be paid in the treasury of the state.

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C. C. 400, Corpora...

Line 2—for "a" read "such."

... are trustees

... directors or managers of the ... time of its dissolution are stockholders or members of the corporation dissolved, and have full power to settle the affairs of the corporation.

CHAPTER VI.—TAXATION.

How Taxed.

Liable for Road Poll Tax of Employees.

Franchise Tax.

Shares of Stock Not to Be Taxed.

How Taxed.

Pol. C. Sec. 3641. The property of every firm and corporation must be assessed in the county where the property is situate, and must be assessed in the name of the firm or corporation.

Liable for the Road Poll Tax of Employees.

Pol. C. 2671. Corporations, or other employers of persons in any road district subject to road tax, are chargeable for the road poll tax assessed against their employees to the extent of any credit in their hands not exceeding such tax; provided, the road overseer shall first give notice to such employer, or the managing agent of such corporation, and from the time of such notice, the amount of any credit in his hands, or that shall thereafter accrue sufficient to satisfy said tax, shall be paid to the road tax collector, whose receipt shall be evidence in bar of the prosecution of any action by the employee against the principal for the recovery of the same.

Franchise Tax.

Pol. C. 3628. The franchise, roadway, road-bed, rails, and rolling stock of all railroads operated in more than one county in this state shall be assessed by the state board of equalization, as hereinafter provided for. Other franchises, if granted by the authorities of a county, city, or city and county, must be assessed in the county, city, or city and county within which they were granted; if granted by any other authority, they must be assessed in the county in which the corporations, firms, or persons owning or holding them have their principal place of business. All other taxable property shall be assessed in the county, city, or city and county, town, township, or district in which it is situated. Land shall be assessed in parcels or subdivisions not exceeding six hundred and forty acres each; and tracts of land containing more than six hundred and forty acres, which have been sectionized by the United States government, shall be assessed by sections or fractions of sections. Lands sold by the state for which no patent has been issued shall be assessed the same as other lands, but the owner shall be entitled to a deduction from such assessed valuation in the amount due the

state as principal upon the purchase price. The assessor must, between the first Mondays in March and July of each year, ascertain the names of all taxable inhabitants, and all the property in his county subject to taxation, except such as is required to be assessed by the state board of equalization, and must assess such property to the persons by whom it was owned or claimed, or in whose possession or control it was, at twelve o'clock meridian, of the first Monday in March next preceding; but no mistake in the name of the owner or supposed owner of real property shall render the assessment thereof invalid. In assessing solvent credits, not secured by mortgage or trust deed, a reduction therefrom shall be made of debts due to bona fide residents of this state.

Shares of Stock not to be Taxed.

Pol. C. 1899. 3608. Shares of stock in corporations possess no intrinsic value over and above the actual value of the property of the corporation which they stand for and represent; and the assessment and taxation of such shares, and also all the corporate property, would be double taxation. Therefore, all property belonging to corporations, save and except the property of national banking associations not assessable by federal statute, shall be assessed and taxed. But no assessment shall be made of shares of stock in any corporation, save and except in national banking associations, whose property, other than real estate, is exempt from assessment by federal statute.

CHAPTER VII.—POWERS AND LIABILITIES OF CORPORATIONS.

Powers in General.

Corporations Authorized to Act as Executor,
Receiver, or Trustee.

Corporations Authorized to Act as Surety.

Not to Issue Bills as Currency.

Not to Employ Chinese.

Bonded Indebtedness.

Contracts—How Ratified.

Power to Take by Devise.

Power to Acquire Realty.

Power to Alienate Franchises.

Franchises Can Be Taken on Execution.

Powers in General.

Const. Art. XII, Sec. 9. No corporation shall engage in any business other than that expressly authorized in its charter, or the law under which it may have been, or may hereafter be organized; nor shall it hold for a longer period than five years any real estate except such as may be necessary for carrying on its business.

C. C. Sec. 354. Every corporation, as such, has power:

1. Of succession, by its corporate name, for the period limited; and when no period is limited, perpetually;

2. To sue and to be sued, in any court;

3. To make and use a common seal, and alter the same at pleasure;

4. To purchase, hold and convey such real and personal estate as the purposes of the corporation may require, not exceeding the amount limited in this part;

5. To appoint such subordinate officers or agents as the business of the corporation may re-

quire, and to allow them suitable compensation;

6. To make by-laws, not inconsistent with any existing law, for the management of its property, the regulation of its affairs, and for the transfer of its stock;

7. To admit stockholders or members, and to sell their stock or shares for the payment of assessments or installments;

8. To enter into any obligations or contracts essential to the transaction of its ordinary affairs, or for the purposes of the corporation.

C. C. Sec. 355. In addition to the powers enumerated in the preceding section, and to those expressly given in that title of this part under which it is incorporated, no corporation shall possess or exercise any corporate powers, except such as are necessary to the exercise of the powers so enumerated and given.

Corporations Authorized to Act as Executor, Receiver or Trustee.

C. C. P. Sec. 1348. Corporations, authorized by their articles of incorporation to acts as executor, administrator, guardian of estates, assignee, receiver, depository, or trustee, and having a paid-up capital of not less than two hundred and fifty thousand dollars, of which one hundred thousand dollars shall have been actually paid in cash, may be appointed to act in such capacity in like manner as individuals. In all cases in which it is required that an executor, administrator, guardian, assignee, receiver, depository, or trustee, shall qualify by taking and subscribing an oath, or in which an affidavit is required, it shall be a sufficient qualification by such corporation, if such oath shall be taken and subscribed, or such affidavit made, by the president or secretary or manager thereof; and such officer shall be liable for the failure of such corporation to perform any of the duties required by law to be performed by individuals acting in like capacity and subject to like penalties; and such

corporation shall be liable for such failure to the full amount of its capital stock and upon the bond required upon its assuming the trusts provided for herein.

Corporations Authorized to Act as Surety.

C. C. P. Sec. 1056. In all cases where an undertaking or bond, with any number of sureties, is authorized or required by any provision of this code, or of any law of this state, any corporation with a paid up capital of not less than one hundred thousand dollars, incorporated under the laws of this or any other state of the United States for the purpose of making, guaranteeing, or becoming a surety upon bonds or undertakings required or authorized by law, or which, by the laws of the state where it was originally incorporated has such power, and which shall have complied with all the requirements of the law of this state regulating the formation or admission of these corporations to transact such business in this state, may become and shall be accepted as security or as sole and sufficient surety upon such undertaking or bond, and such corporate surety shall be subject to all the liabilities and entitled to all the rights of natural persons' sureties; provided, that the insurance commissioner shall have the same jurisdiction and powers to examine the affairs of such corporations as he has in other cases; shall require them to file similar statements and issue to them a similar certificate. And whenever the liabilities of any such corporation shall exceed its assets, the insurance commissioner shall require the deficiency to be paid up in sixty days, and if it is not so paid up, then he shall issue a certificate showing the extent of such deficiency, and he shall publish the same once a week for three weeks, in a daily San Francisco paper. And, until such deficiency is paid up, such company shall not do business in this state. In estimating the condition of any such company, the commissioner shall

allow as assets only such as are allowed under existing laws at the time, and shall charge as liabilities, in addition of eighty per cent. of the capital stock, all outstanding indebtedness of the company, and a premium reserve equal to fifty per cent. of the premiums charged by said company on all risks then in force.

C. C. P. Sec. 1057. In any case where an undertaking or bond is authorized or required by any law of this state, the officer taking the same must, except in the case of such a corporation as is mentioned in the next preceding section, require the sureties to accompany it with an affidavit that they are each residents and householders, or freeholders, within the state, and are each worth the sum specified in the undertaking or bond, over and above all their just debts and liabilities, exclusive of property exempt from execution; but when the amount specified in the undertaking or bond exceeds three thousand dollars, and there are more than two sureties thereon, they may state in their affidavits that they are severally worth amounts less than the amount specified in the undertaking or bond, if the whole amount is equivalent to that of two sufficient sureties. Any corporation such as is mentioned in the next preceding section, may become one of such sureties. No such corporation must be accepted in any case as a surety when its liabilities exceed its assets as ascertained in the manner provided in section ten hundred and fifty-six. Whenever an undertaking has been given and approved in any action or proceeding, and it is thereafter made to appear to the satisfaction of the court that any surety upon such undertaking has for any reason become insufficient, the court may upon notice, order the giving of a new undertaking, with sufficient sureties, in lieu of such insufficient undertaking. In case such new undertaking so required shall not be given within the time required by such order, or in

case the sureties thereon fail to justify thereon when required, all rights obtained by the filing of such original undertaking shall immediately cease.

Not to Issue Bills as Currency.

C. C. Sec. 356. No corporation shall create or issue bills, notes, or other evidences of debt, upon loans or otherwise, for circulation as money.

Not to Employ Chinese.

Const. Art. XIX, Sec. 2. No corporation now existing or hereafter formed under the laws of this state, shall, after the adoption of this constitution, employ, directly or indirectly, in any capacity, any Chinese or Mongolian. The legislature shall pass such laws as may be necessary to enforce this provision.

Bonded Indebtedness.

Const. Art. XII, Sec. 11. No corporation shall issue stock or bonds, except for money paid, labor done, or property actually received, and all fictitious increase of stock or indebtedness shall be void. The stock and bonded indebtedness of corporations shall not be increased except in pursuance of general law, nor without the consent of the person holding the larger amount in value of the stock, at a meeting called for that purpose, giving sixty days' public notice, as may be provided by law.

Contracts—How Ratified.

C. C. Sec. 2310. A ratification can be made only in the manner that would have been necessary to confer an original authority for the act ratified, or where an oral authorization would suffice, by accepting or retaining the benefit of the act, with notice thereof.

Power to Take by Devise.

C. C. Sec. 1275. A testamentary disposition may be made to any person capable by law of taking the property so disposed of, except that

corporations other than counties, municipal corporations, and corporations formed for scientific, literary, or solely educational or religious purposes, cannot take under a will, unless expressly authorized by statute.

Power to Acquire Realty.

C. C. Sec. 360. No corporation shall acquire or hold any more real property than may be reasonably necessary for the transaction of its business, or the construction of its works, except as otherwise specially provided. A corporation may acquire real property, as provided in title seven, part three, of the Code of Civil Procedure, when needed for any of the uses and purposes mentioned in said title. By a unanimous vote of all the directors at any regular meeting, any corporation existing, or hereafter to be formed under the laws of this state, may acquire and hold the land and building on and in which its business is carried on, and may improve the same to any extent required for the convenient transaction of its business.

Civil Code 299, p. 372, *supra*.

Constitution Art. XII, Sec. 9, p. 392, *supra*.

Power to Alienate Franchises.

Const. Art. XII, Sec. 10. The legislature shall not pass any laws permitting the leasing or alienation of any franchise, so as to relieve the franchise or property held thereunder from the liabilities of the lessor or grantor, lessee or grantee, contracted or incurred in the operation, use or enjoyment of such franchise, or any of its privileges.

C. C. Sec. 364. Any corporation of this state owning grants, concessions, franchises, and properties, or any thereof, in any foreign country, may sell and convey the same to the government of such foreign country, or to any person or persons, or any corporation or corporations, or association or associations, created by or existing under the

laws of this or any other state or the United States, or any foreign government; provided, however, that the powers hereby granted shall only be exercised by a majority of the entire board of directors of such corporation of this state, with the concurrence in writing of the holders of two thirds in amount of the capital stock thereof.

Franchises Can Be Taken on Execution.

C. C. Sec. 388. For the satisfaction of any judgment against any person, company, or corporation having any franchise other than that of being a corporation, such franchise rights and privileges thereof, may be taken and sold under execution, in the same manner and with the same effect, as any other property.

C. C. Sec. 389. The purchaser at the sale must receive a certificate of purchase of the franchise, and be immediately let into the possession of all property necessary for the exercise of the powers and the receipt of the proceeds thereof, and must thereafter conduct the business of such corporation, with all its powers and privileges, and subject to all its liabilities, until the redemption of the same, as hereinafter provided.

C. C. Sec. 390. The purchaser, or his assignee, is entitled to recover any penalties imposed by law and recoverable by the corporation for an injury to the franchise or property thereof, or for any damages, or other cause, occurring during the time he holds the same, and may use the name of the corporation for the purpose of any action necessary to recover the same. A recovery for damages or any penalties thus had is a bar to any subsequent action by or on behalf of the corporation for the same.

C. C. Sec. 391. The person, company, or corporation whose franchise is sold, as in this article provided, in all other respects retains the same powers, is bound to the discharge of the same duties, and is liable to the same penalties and forfeitures, as before such sale.

C. C. 392, Corporations in California, p. 399.

392. The corporation may, at any time within one year after such sale, redeem the franchise, by paying or tendering to the purchaser thereof the sum paid therefor, with ten per cent interest thereon, but without any allowance for the toll which he may in the meantime have received; and upon such payment or tender the franchise and all the rights and privileges thereof revert and come to the corporation, as if no such sale had been made.

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any such sale
of Civil Pro-

C. C. Sec. 393. The sale of any franchise under execution must be made in the county in which the corporation has its principal place of business, or in which the property, or some portion thereof, is situated.

Const. Art. IV, Sec. 25. The legislature shall not pass local or special laws in any of the following cases, that is to say:

* * * *

corporation, association or
or exclusive right, privi-

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* * * *

CHAPTER VIII.—CORPORATE LIABILITY FOR WRONGFUL ACTS.

Can Be Indicted.

How Indicted.

Criminal Procedure.

~~Can Be Indicted.~~

Penal Code 26a, Corporations in California, p. 399. Corporations are capable of the same manner as natural persons. Imprisonment is

This was a new section added by the code commission.
declareu crime, in
case a corporation is crime, the
same must be punished by a fine exceeding
five hundred dollars, if a misdemeanor, or not
exceeding five thousand dollars, if a felony.

How Indicted.

Pen. C. Sec. 1390. Upon a complaint against a corporation, the magistrate must issue a summons signed by him, with his name of office, requiring the corporation to appear before him, at a specified time and place, to answer the charge, the time to be not less than ten days after the issuing of the summons.

Pen. C. Sec. 1391. The summons must be substantially in the following form:

"County of——

"The people of the state of California to (naming the corporation):

"You are hereby summoned to appear before me at (naming the place), on (specifying the day and hour), to answer a charge made against you upon the complaint of A. B. (or the complaint of the grand jury of the county, as the case may be), for (designating the offense generally).

"Dated at the city (or township) of ——, this
—— day of ——.

"G. H.,

"Justice of the Peace" (or as the case may be).

Criminal Procedure.

See Sections 1392-1397, Penal Code.

CHAPTER IX.—RECEIVERS.

Injunction.

Receivers before Dissolution.

Receivers after Dissolution.

Injunction.

C. C. P. Sec. 531. An injunction to suspend the general and ordinary business of a corporation cannot be granted without due notice of the application therefor to the proper officers or managing agent of the corporation, except when the people of this state are a party to the proceeding.

Receivers Before Dissolution.

C. C. P. Sec. 564. A receiver may be appointed by the court in which an action is pending, or by the judge thereof:

1. * * *

2. * * *

3. After judgment, to carry the judgment into effect;

4. * * *

5. In the cases when a corporation has been dissolved, or is insolvent, or in imminent danger of insolvency, or has forfeited its corporate rights;

6. In all other cases where receivers have heretofore been appointed by the usages of courts of equity.

Receivers After Dissolution.

C. C. P. Sec. 565. Upon the dissolution of any corporation, the superior court of the county in which the corporation carries on its business, or has its principal place of business, on application of any creditor of the corporation, or of any stockholder or member thereof, may appoint one or more persons to be receivers or trustees of the corporation, to take charge of the estate and effects thereof, and to collect the debts and property due and belonging to the corporation, and to pay the outstanding debts thereof, and to divide the moneys and other property that shall remain over, among the stockholders or members.

CHAPTER X.—STOCK AND STOCKHOLDERS.

Shares of Stock.

Corporation Can Take and Hold Its Own Shares.

Shares of Stock Attachable.

Specific Performance of Contracts to Buy or Sell Stock.

Increase and Decrease of Capital Stock.

Shares of Stock.

C. C. Sec. 298. The owners of shares in a corporation which has a capital stock are called stockholders. If a corporation has no capital stock, the corporators and their successors are called members.

Corporation Can Take and Hold Its Own Shares.

C. C. Sec. 344. All purchases of its own stock

made by any corporation vest the legal title to the same in the corporation; and the stock so purchased is held subject to the control of the stockholders, who may make such disposition of the same as they deem fit, in accordance with the by-laws of the corporation or vote of a majority of all the remaining shares. Whenever any portion of the capital stock of a corporation is held by the corporation by purchase, a majority of the remaining shares is a majority of the stock for all purposes of election or voting on any question at a stockholders' meeting.

Shares of Stock Attachable.

C. C. P. Sec. 542. The sheriff to whom the writ is directed and delivered must execute the same without delay, and if the undertaking mentioned in section five hundred and forty is not given, as follows: * * * * *

4. Stocks or shares, or interests in stocks or shares, of any corporation or company, must be attached by leaving with the president, or other head of the same, or the secretary, cashier, or other managing agent thereof, a copy of the writ, and a notice stating that the stock or interest of the defendant is attached, in pursuance of such writ.* * * * *

Specific Performance of Contracts to Buy or Sell Stock.

C. C. 3384. Except as otherwise provided in this article, specific performance of an obligation may be compelled.

C. C. 3390. The following obligations cannot be specifically enforced:

1. An obligation to render personal service.
2. An obligation to employ another in personal service.
3. An agreement to submit a controversy to arbitration.
4. An agreement to perform an act which the party has not power lawfully to perform when required to do so.

5. An agreement to procure the act or consent of the wife of the contracting party, or of any other third person; or,

6. An agreement, the terms of which are not sufficiently certain to make the precise act which is to be done clearly ascertainable.

Increase or Decrease of Capital Stock.

C. C. Sec. 359. No corporation shall issue stock or bonds except for money paid, labor done, or property actually received, and all fictitious increase of stock or indebtedness is void.

Every corporation may increase or diminish its capital stock, create or increase its bonded indebtedness, subject to the following provisions:

First. The capital stock of a corporation may be increased or diminished at a meeting of the stockholders by a vote representing at least two-thirds of the subscribed capital stock; such meeting must be called by the board of directors, and notice must be given by publication in a newspaper published in the county where the principal place of business of such corporation is located, or if there be none published in said county, then in a newspaper published in an adjoining county, such paper to be designated by the board of directors in the order calling the meeting.

Second. The notice must specify the object of the meeting, and the amount to which it is proposed to increase or diminish the capital stock, the time and place of holding the meeting, which latter must be at the principal place of business of the corporation, and at the building where the board of directors usually meet. The notice herein provided must be published once a week for at least sixty days. The capital stock cannot be diminished to an amount less than the indebtedness of the corporation.

Third. The bonded indebtedness of a corporation may be created or increased by a vote of the stockholders representing at least two-thirds of the subscribed capital stock at a meeting called

by the board of directors, and after notice of the time and place of the meeting, published in the same manner and for the time above prescribed, which notice shall state the amount of the bonded indebtedness which it is proposed to create, or the amount to which it is proposed to increase such indebtedness, and shall in all other respects contain the same matters as are above provided and set forth in the notice of a meeting to increase or diminish the capital stock.

Fourth. In addition to the notice by publication, the secretary of the corporation shall also address a notice to each of the stockholders whose name appears on the company's books as sufficiently addressed at his place of residence if known, and if not known, then at the principal place of business of the corporation, which notice shall be mailed to such stockholders at least thirty days before the day appointed for such meeting;

And upon such increase or diminution of the capital stock or creation or increase of bonded indebtedness being made as herein provided, a certificate must be signed by the chairman and secretary of the meeting and a majority of the directors, showing a compliance with the requirements of this section, the amount to which the capital stock has been increased or diminished, or the amount of the bonded indebtedness created or to which the bonded indebtedness may have been increased, and the amount of stock represented at the meeting, and the whole vote by which the object was accomplished.

The certificate must be filed in the office of the clerk of the county where the original articles of incorporation are filed, and a certified copy thereof in the office of the secretary of state; and thereupon the capital stock shall be so increased or diminished, or the bonded indebtedness may be created or increased accordingly.

When the by-laws of the corporation presc

the paper in which notices of meeting are to be published, the notices herein provided for shall be published in such paper unless publication thereof shall have ceased.

Constitution Art. XII, Sec. 11, p. 396, supra.

CHAPTER XI.—SHARES—HOW ISSUED AND ACQUIRED.

Deceit in Subscription to Stock a Crime.

Right to Demand Certificates.

Right to Demand Duplicate Certificates.

Right of Corporation to Issue Shares at Market Value.

Deceit in Subscription to Stock a Crime.

Pen. C. Sec. 557. Every person who signs the name of a fictitious person to any subscription for or agreement to take stock in any corporation existing or proposed, and every person who signs to any subscription or agreement the name of any person, knowing that such person has not means or does not intend in good faith to comply with all the terms thereof, or under any understanding or agreement that the terms of such subscription or agreement are not to be complied with or enforced, is guilty of a misdemeanor.

Pen. C. Sec. 559. Every person who, without being authorized so to do, subscribes the name of another to or inserts the name of another in any prospectus, circular, or other advertisement or announcement of any corporation or joint stock association, existing or intended to be formed, with intent to permit the same to be published, and thereby to lead persons to believe that the person whose name is so subscribed is an officer, agent, member, or promoter of such corporation or association, is guilty of a misdemeanor.

Right to Demand Certificates.

Sec. 323. All corporations for profit must issue certificates for stock when fully paid up,

C. C. 323. Corporations for profit must
Strike out for those corporations

signed by the president and secretary, and may provide, in their by-laws, for issuing certificates prior to full payment, under such restrictions and for such purposes as their by-laws may provide, but any certificate issued prior to full payment must show on its face what amount has been paid thereon.

Right to Demand Duplicate Certificates.

C. C. Sec. 328. Whenever a certificate of stock or of shares in a corporation organized under the laws of this state has been lost or destroyed, the owner thereof may bring an action against the corporation in the superior court of the county in which is located its principal place of business, for the purpose of obtaining a new or duplicate certificate. If by the books of the corporation the stock stands in the name of a person other than the plaintiff, or if by such books it appears that some other person claims or has some right, title, or interest in, or lien upon, such stock, all such persons must be made parties defendant with the corporation. Summons must be issued and served as in other civil actions, and in addition thereto, the court must direct its clerk to issue and cause to be published, at least once a week for four successive weeks, in some newspaper published in the county, a notice setting forth the pendency of the action, the names of the parties thereto, the court in which it is pending, the name of the corporation issuing the stock, the number of the certificate and the number of the shares, the name of the person mentioned as stockholder in the certificate, and notifying all persons claiming said shares, or any of them, or any interest or lien therein or thereon, to be and appear before the court at a time and place to be designated in the notice not less than thirty days from the first publication thereof, then and there to show cause why a new certificate should not be directed to be issued to the plaintiff, and to set forth their rights in or claim to such shares. If any

one appears and answers or intervenes in the action, it must proceed to trial as in other civil cases, and the court must enter such judgment as from the facts established may be proper; but if no one appears within the time designated in such notice, nor within the time allowed by law after the service of such summons, the court must hear such evidence as may be offered in support of the allegations of the complaint, and make and file its decision thereon, and thereupon may enter its order canceling the lost or destroyed certificate, and issue to the corporation upon payment of the costs incurred by it in the premises and without cost against the corporation, to issue to the plaintiff a new or duplicate certificate. After the issuing of a new certificate by the corporation pursuant to any judgment in such action, no action can ever be maintained by any person against the corporation in reference to said lost or destroyed certificate or the shares represented thereby, and thereafter any such action is forever barred as against the corporation.

Right of Corporation to Issue Shares at Market Value.

Constitution Art. XII, Sec. 11, p. 396, supra.

Civil Code, Sec. 359, p. 403, supra.

CHAPTER XII.—TRANSFER OF SHARES.

Shares of a Married Woman.

Shares of a Non-Resident.

"Margin" Sales Void.

Transfer, by Delivery of Certificate, to be Registered.

Shares of a Married Woman.

C. C. Sec. 325. Shares of stock in corporations standing on the books of the corporation in the name of a married woman may be transferred by her, her agent or attorney, without the signature of her husband, and in the same manner as if

such married woman were a feme sole. All dividends payable upon any of such shares of stock may be paid to her, her agent or attorney, in the same manner as if she were unmarried; and any proxy or power given by her, touching any of such shares, is valid and binding, and neither it nor any receipt for dividends need be signed by her husband.

Shares of a Non-Resident.

C. C. Sec. 326. When the shares of stock in a corporation are owned by parties residing out of the state, the president, secretary, or directors of the corporation, before entering any transfer of the shares on its books, or issuing a certificate therefor to the transferee, may require from the attorney or agent of the non-resident owner, or from the person claiming under the transfer, an affidavit or other evidence that the non-resident owner was alive at the date of the transfer, and if such affidavit or other satisfactory evidence be not furnished, may require from the attorney, agent, or claimant a bond of indemnity, with two sureties, satisfactory to the officers of the corporation; or, if not so satisfactory, then one approved by a judge of the superior court of the county in which the principal office of the corporation is situated, conditioned to protect the corporation against any liability to the legal representatives of the owner of the shares in case of his or her death before the transfer; and if such affidavit or other evidence or bond be not furnished when required as herein provided, neither the corporation, nor any officer thereof shall be liable for refusing to enter the transfer on the books of the corporation.

Margin Sales Void.

Const. Art IV. Sec. 26. * * * The legislature shall pass laws to regulate or prohibit the buying and selling of the shares of the capital stock of corporations in any stock board, stock exchange or stock market under the control of any associa-

tion. All contracts for the sale of shares of the capital stock of any corporation or association, on margin or to be delivered at a future day, shall be void, and any money paid on such contracts may be recovered by the party paying it by suit in any court of competent jurisdiction.

Transfer, by Delivery of Certificate to be Registered.

C. C. Sec. 324. Whenever the capital stock of any corporation is divided into shares, and certificates therefor are issued, such shares of stock, except as hereinafter provided, are personal property, and may be transferred by indorsement by the signature of the proprietor, his agent, attorney, or legal representative, and the delivery of the certificate; but such transfer is not valid, except as to the parties thereto, until the same is so entered upon the books of the corporation as to show the names of the parties by whom and to whom transferred, the number of the certificate, the number or designation of the shares, and the date of transfer; provided, however, that any corporation organized for, or engaged in the business of selling, distributing, supplying, or delivering water for irrigation purposes, or for domestic use, may in its by-laws provide that water shall only be so sold, distributed, supplied, or delivered to owners of its capital stock, and that such stock shall be appurtenant to certain lands when the same are described in the certificate issued therefor; and when such certificate shall be so issued, and a certified copy of such by-law recorded in the office of the county recorder in the county where such lands are situated, the shares of stock so located on any land shall only be transferred with said lands and shall pass as an appurtenance thereto.

CHAPTER XIII.—ASSESSMENTS AND DIVIDENDS.

Right to Levy Assessments.

Amount of Assessments.

Method of Levy.

Delinquent Sale.

Corporation May Bid In.

Defective Levy.

Proof of Levy.

Collection by Action at Law.

Dividends.

Right to Levy Assessments.

C. C. Sec. 331. The directors of any corporation formed or existing under the laws of this state, after one-fourth of its capital stock has been subscribed, may, for the purpose of paying expenses, conducting business, or paying debts, levy and collect assessments upon the subscribed capital stock thereof, in the manner and form, and to the extent, provided herein.

Amount of Assessment.

C. C. Sec. 332. No one assessment must exceed ten per cent. of the amount of the capital stock named in the articles of incorporation, except in the cases in this section otherwise provided for, as follows:

1. If the whole capital of a corporation has not been paid up, and the corporation is unable to meet its liabilities or to satisfy the claims of its creditors, the assessment may be for the full amount unpaid upon the capital stock; or if a less amount is sufficient, then it may be for such a percentage as will raise that amount;

2. The directors of railroad corporations may assess the capital stock in installments of not

more than ten per cent. per month, unless in the articles of incorporation it is otherwise provided;

3. The directors of fire or marine insurance corporations may assess such a percentage of the capital stock as they deem proper.

C. C. Sec. 333. No assessment must be levied while any portion of a previous one remains unpaid, unless:

1. The power of the corporation has been exercised in accordance with the provisions of this article for the purpose of collecting such previous assessment.

2. The collection of the previous assessment has been enjoined; or,

3. The assessment falls within the provisions of either the first, second, or third subdivision of section three hundred and thirty-two.

Method of Levy.

C. C. Sec. 334. Every order levying an assessment must specify the amount thereof, when, to whom, and where payable; fix a day, subsequent to the full term of publication of the assessment notice, on which the unpaid assessments shall be delinquent, not less than thirty nor more than sixty days from the time of making the order levying the assessment; and a day for the sale of delinquent stock, not less than fifteen nor more than sixty days from the day the stock is declared delinquent.

C. C. Sec. 335. Upon the making of the order, the secretary shall cause to be published a notice thereof, in the following form:

(Name of corporation in full. Location of principal place of business.) Notice is hereby given that at a meeting of the directors, held on the (date), an assessment of (amount) per share was levied upon the capital stock of the corporation, payable (when, to whom, and where). Any stock upon which this assessment shall remain unpaid on the (day fixed) will be delinquent and advertised for sale at public auction, and, unless pay-

ment is made before, will be sold on the (day appointed), to pay the delinquent assessment, together with costs of advertising and expenses of sale. (Signature of secretary, with location of office.)

C. C. Sec. 336. The notice must be personally served upon each stockholder, or, in lieu of personal service, must be sent through the mail, addressed to each stockholder at his place of residence, if known, and if not known, at the place where the principal office of the corporation is situated, and be published once a week, for four successive weeks, in some newspaper of general circulation and devoted to the publication of general news, published at the place designated in the articles of incorporation as the principal place of business, and also in some newspaper published in the county in which the works of the corporation are situated, if a paper be published therein. If the works of the corporation are not within a state or territory of the United States, publication in a paper of the place where they are situated is not necessary. If there be no newspaper published at the place designated as the principal place of business of the corporation, then the publication must be made in some other newspaper of the county, if there be one, and if there be none, then in a newspaper published in an adjoining county.

Delinquent Sale.

C. C. Sec. 337. If any portion of the assessment mentioned in the notice remains unpaid on the day specified therein for declaring the stock delinquent, the secretary must, unless otherwise ordered by the board of directors, cause to be published in the same papers in which the notice hereinbefore provided for shall have been published, a notice substantially in the following form:

(Name in full. Location of principal place of business.) Notice.—There is delinquent upon

the following described stock, on account of assessment levied on the (date), (and assessments levied previous thereto, if any), the several amounts set opposite the names of the respective shareholders, as follows: (Names, number of certificate, number of shares, amount.) And in accordance with law (and an order of the board of directors, made on the (date), if any such order shall have been made), so many shares of each parcel of such stock as may be necessary, will be sold, at the (particular place), on the (date), at (the hour) of such day, to pay delinquent assessments thereon, together with costs of advertising and expenses of the sale.

(Name of secretary, with location of office.)

C. C. Sec. 338. The notice must specify every certificate of stock, the number of shares it represents, and the amount due thereon, except where certificates may not have been issued to parties entitled thereto, in which case the number of shares and amounts due thereon, together with the fact that the certificates for such shares have not been issued, must be stated.

C. C. Sec. 339. The notice, when published in a daily paper, must be published for ten days, excluding Sundays and holidays, previous to the day of sale. When published in a weekly paper, it must be published in each issue for two weeks previous to the day of sale. The first publication of all delinquent sales must be at least fifteen days prior to the day of sale.

C. C. Sec. 340. By the publication of the notice, the corporation acquires jurisdiction to sell and convey a perfect title to all of the stock described in the notice of sale upon which any portion of the assessment or costs of advertising remains unpaid at the hour appointed for the sale, but must sell no more of such stock than is necessary to pay the assessments due and costs of sale.

C. C. Sec. 341. On the day, at the place, and at the time appointed in the notice of sale, the sec-

retary must, unless otherwise ordered by the directors, sell or cause to be sold at public auction, to the highest bidder for cash, so many shares of each parcel of the described stock as may be necessary to pay the assessment and charges thereon, according to the terms of sale; if payment is made before the time fixed for sale, the party paying is only required to pay the actual cost of advertising, in addition to the assessment.

C. C. Sec. 342. The person offering at such sale to pay the assessment and costs for the smallest number of shares or fraction of a share is the highest bidder, and the stock purchased must be transferred to him on the stock books of the corporation, on payment of the assessment and costs.

Corporation May Bid In.

C. C. Sec. 343. If, at the sale of stock, no bidder offers the amount of the assessments and costs and charges due, the same may be bid in and purchased by the corporation; through the secretary, president, or any director thereof, at the amount of the assessments, costs, and charges due; and the amount of the assessments, costs, and charges must be credited as paid in full on the books of the corporation, and entry of the transfer of the stock to the corporation must be made on the books thereof. While the stock remains the property of the corporation, it is not assessable, nor must any dividends be declared thereon; but all assessments and dividends must be apportioned upon the stock held by the stockholders of the corporation.

C. C. Sec. 345. The dates fixed in any notice of assessment or notice of delinquent sale, published according to the provisions hereof, may be extended from time to time for not more than thirty days, by order of the directors, entered on the records of the corporation; but no order extending the time for the performance of any act specified in any notice is effectual unless notice of such

extension or postponement is appended to and published with the notice to which the order relates.

Defective Levy.

C. C. Sec. 346. No assessment is invalidated by a failure to make publication of the notices hereinbefore provided for, nor by the nonperformance of any act required in order to enforce the payment of the same; but in case of any substantial error or omission in the course of proceedings for collection, all previous proceedings, except the levying of the assessment, are void, and publication must be begun anew.

C. C. Sec. 347. No action must be sustained to recover stock sold for delinquent assessments, upon the ground of irregularity in the assessment, irregularity or defect of the notice of sale, or defect or irregularity in the sale, unless the party seeking to maintain such action first pays or tenders to the corporation, or the party holding the stock sold, the sum for which the same was sold, together with all subsequent assessments which may have been paid thereon, and interest on such sums from the time they were paid; and no such action must be sustained unless the same is commenced by the filing of a complaint and the issuing of a summons thereon within six months after such sale was made.

Proof of Levy.

C. C. Sec. 348. The publication of notice required by this article may be proved by the affidavit of the printer, foreman, or principal clerk of the newspaper in which the same is published; and the affidavit of the secretary or auctioneer is prima facie evidence of the time and place of sale, of the quantity and particular description of the stock sold, and to whom, and for what price, and of the fact of the purchase money being paid. The affidavits must be filed in the office of the corporation, and copies of the

same, certified by the secretary thereof, are prima facie evidence of the facts therein stated. Certificates signed by the secretary and under the seal of the corporation are prima facie evidence of the contents thereof.

Collection by Action at Law.

C. C. Sec. 349. On the day specified for declaring the stock delinquent, or at any time subsequent thereto and before the sale of the delinquent stock, the board of directors may elect to waive further proceedings under this chapter for the collection of delinquent assessments, or any part or portion thereof, and may elect to proceed by action to recover the amount of the assessment and the costs and expenses already incurred, or any part or portion thereof.

Dividends.

C. C. Sec. 309. The directors of corporation must not make dividends, except from the profits arising from the business. *Corporations in California, p. 416.*
must they create any debts beyond the subscribed capital stock; nor withdraw, or pay to the stockholders, any part of the capital stock, except as hereinafter provided, nor reduce or increase the capital stock, except as herein specially provided. *... must they create any debts beyond the subscribed capital stock...*
For a violation of the provisions of this section, the directors under whose administration the same may have happened (except those who may have caused their dissent therefrom to be entered at large on the minutes of the directors at the time, or were not present when the same did happen) are, in their individual or private capacity, jointly and severally liable to the corporation, and to the creditors thereof, to the full amount of the capital stock so divided, withdrawn, paid out, or reduced, or debt contracted; and no statute of limitation is a bar to any suit against such directors for any sums for which they are liable by this section; provided, however, that where a corporation has

been heretofore or may hereafter be formed for the purpose, among other things, of acquiring, holding, and selling real estate, water, and water rights, the directors of such corporation may, with the consent of stockholders representing two thirds of the capital stock thereof, given at a meeting called for that purpose, divide among the stockholders the land, water, or water rights so by such corporation held, in the proportions to which their holdings of such stock at the time of such division entitle them. All conveyances made by the corporation in pursuance of this section must be made and received subject to the debts of such corporation existing at the date of the conveyance thereof. Nothing herein prohibits a division and distribution of the capital stock of any corporation which remains after the payment of all its debts, upon its dissolution, or the expiration of its term of existence.

CORPORATE MEETINGS AND

Necessity of Corporate Meetings.

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The Right to Vote at Elections.

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Persons Entitled to Vote.

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Necessity of Corporate Meetings.

C. C. Sec. 318. The stockholders or members of such corporation, when so assembled, may elect officers to fill all vacancies then existing, and may act upon such other business as might law-

fully be transacted at regular meetings of the corporation.

How Called.

C. C. Sec. 311. Whenever, from any cause, there is no person authorized to call or to preside at a meeting of a corporation, any justice of the peace of the county where such corporation is established may, on written application of three or more of the stockholders or of the members thereof, issue a warrant to one of the stockholders or members, directing him to call a meeting of the corporation, by giving the notice required, and the justice may, in the same warrant, direct such person to preside at such meeting until a clerk is chosen and qualified, if there is no other officer present legally authorized to preside thereat. The application of a number of stockholders less than three, but holding a majority of the capital stock, has the same effect as an application by three or more stockholders or members.

The Right to Vote at Elections.

C. C. Sec. 312. At all elections or votes had for any purpose there must be a majority of the subscribed capital stock, or of the members present, either in person or by proxy. Every person acting as a member thereof, or a stockholder having stock in his own name on the stock books of the corporation at least ten days prior to the election. Any vote or election had other than in accordance with the provisions of this article is voidable at the instance of absent or any stockholders or members, and may be set aside by petition to the superior court of the county where the same was held. Any regular or called meeting of the stockholders or members may adjourn from day to day, or from time to time, if for any reason there is not present a majority of the subscribed stock or members, or no election had—such adjournment and the rea-

sons therefor being recorded in the journal of proceedings of the board of directors.

Elections May Be Postponed.

C. C. Sec. 314. If from any cause an election appointed by law it may be held on any day thereafter as is provided for in such by-laws, or to which such election may be adjourned or ordered by the directors. If an election has not been held at the appointed time, and no adjourned or other meeting for the purpose has been ordered by the directors, a meeting may be called by the stockholders as provided in section three hundred and ten.

Notice of Meeting May Be Waived—How.

C. C. Sec. 317. When all the stockholders or members of a corporation are present at any meeting, however called or notified, and sign a written consent thereto on the record of such meeting, the doings of such meeting are as valid as if had at a meeting legally called and noticed.

Place of Meeting.

C. C. Sec. 319. The meetings of the stockholders of a corporation must be held at the principal office or principal place of business.

Persons Entitled to Vote.

Civil Code p. 418, supra.

Civil Code p. 401, supra.

Right to Vote by Proxy.

C. C. Sec. 307. All elections must be by ballot, and every stockholder shall have the right to vote in person or by proxy the number of shares standing in his name, as provided in section three hundred and twelve of this Code, for as many persons as there are directors to be elected, or to cumulate said shares and give one candidate as many votes as the number of directors multiplied by the number of his shares of stock shall equal, or to distribute them on the same principle among

as many candidates as he shall think fit. In corporations having no capital stock, each member of the corporation may cast as many votes for one director as there are directors to be elected, or may distribute the same among any or all of the candidates. In either case the directors receiving the highest number of votes shall be declared elected. The provisions of this section, so far as it relates to cumulative voting, shall not apply to literary, religious, scientific, social, or benevolent societies, unless it shall be so provided in their by-laws or rules.

• **Shares of a Minor, Insane or Deceased Person.**

C. C. Sec. 313. The shares of stock of an estate of a minor, or insane person, may be represented by his guardian, and of a deceased person by his executor or administrator.

Shares of a Married Woman.

Civil Code 325, p. 407, supra.

Right to Cumulate Votes.

Const. Art. XII, Sec. 12. In all elections for directors or managers of corporations, every stockholder shall have the right to vote, in person or by proxy, the number of shares of stock owned by him for as many persons as there are directors or managers to be elected, or to cumulate said shares and give one candidate as many votes as the number of directors multiplied by the number of his shares of stock shall equal, or to distribute them, on the same principle, among as many candidates as he shall think fit; and such directors or managers shall not be elected in any other manner, except that members of co-operative societies formed for agricultural, mercantile and manufacturing purposes, may vote on all questions affecting such societies in manner prescribed by law.

Civil Code 307, p. 419, supra.

CHAPTER XVI.—DIRECTORS.

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The Grant of Powers.

C. C. Sec. 305. The corporate powers, business, and property of all corporations formed under this title must be exercised, conducted, and controlled by a board of not less than five directors, to be elected from among the holders of stock; or where there is no capital stock, then from the members of such corporations; except that corporations formed or to be formed for the purpose of erecting and managing halls and buildings for the meetings and accommodation of several lodges or societies of any benevolent or charitable order or organization, and in connection therewith the leasing of stores and offices in such building or buildings for other purposes, the corporate powers, business, and property thereof may be conducted, exercised, and controlled by a board of not less than five or more than fifty directors, to be chosen from among the stockholders of such corporation or from among the members of such

order or organization. A majority of the directors must be in all cases citizens of this state. Directors of corporations for profit must be holders of stock therein to an amount to be fixed by the by-laws of the corporation. Directors of all other corporations must be members thereof. Unless a quorum is present and acting no business performed or act done is valid as against the corporation. Whenever a vacancy occurs in the office of director, unless the by-laws of the corporation otherwise provide, such vacancy must be filled by an appointee of the board.

Statutory Restrictions on the Grant.

Civil Code 309, p. 416, supra.

Fiduciary Liabilities of Directors.

C. C. Sec. 2228. In all matters connected with his trust, a trustee is bound to act in the highest good faith toward his beneficiary, and may not obtain any advantage therein over the latter by the slightest misrepresentation, concealment, threat, or adverse pressure of any kind.

C. C. Sec. 2229. A trustee may not use or deal with the trust property for his own profit, or for any other purpose unconnected with the trust, in any manner.

C. C. Sec. 2230. Neither a trustee nor any of his agents may take part in any transaction concerning the trust in which he or for any one for whom he acts as agent has an interest, present or contingent, adverse to that of his beneficiary, except as follows:

1. When the beneficiary, having capacity to contract, with a full knowledge of the motives of the trustee, and of all other facts concerning the transaction which might affect his own decision, and without the use of any influence on the part of the trustee, permits him to do so; * * * *

C. C. Sec. 2234. Every violation of the provisions of the preceding sections of this article is a fraud against the beneficiary of the trust.

C. C. Sec. 2231. A trustee may not use the influence which his position gives him to obtain any advantage from his beneficiary.

C. C. Sec. 2232. No trustee, so long as he remains in the trust, may undertake another trust adverse in its nature to the interest of his beneficiary in the subject of the trust, without the consent of the latter.

C. C. Sec. 2239. A trustee is responsible for the wrongful acts of a co-trustee to which he consented, or which, by his negligence, he enabled the latter to commit, but for no others.

Liability for Money Misappropriated.

Const. Art. XII., Sec. 3. Each stockholder of a corporation, or joint-stock association, shall be individually and personally liable for such proportion of all its debts and liabilities contracted or incurred during the time he was a stockholder, as the amount of stock or shares owned by him bears to the whole of the subscribed capital stock, or shares of the corporation or association. The directors or trustees of corporations and joint-stock associations shall be jointly and severally liable to the creditors and stockholders for all moneys embezzled or misappropriated by the officers of such corporation, or joint-stock association, during the term of office of such director or trustee.

C. C. Sec. 327. Any contract or contracts, verbal or written, hereafter made whereby it is sought directly or indirectly to relieve any director or trustee of any corporation or joint-stock association from any liability imposed by section three of article twelve of the constitution of California, are hereby declared to be and shall be null and void.

Pen. C. Sec. 504. Every officer of this state, or of any county, city, city and county, or other municipal corporation or subdivision thereof, and every deputy, clerk, or servant of any such officer, and every officer, director, trustee, clerk, servant,

or agent of any association, society, or corporation, (public or private) who fraudulently appropriates to any use or purpose not in the due and lawful execution of his trust, any property which he has in his possession or under his control by virtue of his trust, or secretes it with a fraudulent intent to appropriate it to such use or purpose, is guilty of embezzlement.

Liability for Property Wrongfully Diverted.

Pen. C. Sec. 560. Every directors of any stock corporation who concurs in any vote or act of the directors of such corporation or any of them, by which it is intended, either—

(1) To make any dividend, except from the surplus profits arising from the business of the corporation, and in the cases and manner allowed by law; or,

(2) To divide, withdraw, or in any manner, except as provided by law, pay to the stockholders, or any of them, any part of the capital stock of the corporation; or,

(3) To discount or receive any note or other evidence of debt in payment of any installment actually called in and required to be paid, or wit' the intent to provide the means of making such payment; or,

(4) To receive or discount any note or other evidence of debt, with the intent to enable an stockholder to withdraw any part of the mone paid in by him, or his stock; or,

(5) To receive from any other stock corporation, in exchange for the shares, notes, bonds, or other evidences of debt of their own corporation, shares of the capital stock of such other corporation, or notes, bonds, or other evidences of debt issued by such other corporation.

—is guilty of a misdemeanor.

Civil Code 309, p. 416, supra.

Liability for False Records or Reports.

Pen. C. Sec. 563. Every director, officer, or agent of any corporation or joint-stock associa-

tion, who knowingly receives or possesses himself of any property of such corporation or association, otherwise than in payment of a just demand, and who, with intent to defraud, omits to make, or to cause or direct to be made, a full and true entry thereof in the books or accounts of such corporation or association, and every director, officer, agent, or member of any corporation or joint-stock association who, with intent to defraud, destroys, alters, mutilates, or falsifies any of the books, papers, writings, or securities belonging to such corporation or association, or makes, or concurs in making, any false entries, or omits, or concurs in omitting to make any material entry in any book of accounts, or other record or document kept by such corporation or association, is punishable by imprisonment in the state prison not less than three nor more than ten years, or by imprisonment in a county jail not exceeding one year, and a fine not exceeding five hundred dollars, or by both such fine and imprisonment.

Penal Code, Corporations in California, p. 425.

564. Every director, officer, or agent of any corporation or joint-stock association, who knowingly concurs in making, publishing, or posting any written report, exhibit, or statement of its affairs, or pecuniary condition, or book or notice containing any material statement which is false, or refuses to make any book or post any notice required by law, in the manner required by law, other than such as are mentioned in this chapter, is guilty of a felony.

condition, or book or notice containing any material statement which is false, or any untrue or wilfully or fraudulently exaggerated report, prospectus, account, statement of operations, values, business, profits, expenditures, or prospects, or any other paper or document intended to produce or give, or having a tendency to produce or give, the shares of stock in such corporation a greater value or a less apparent or market value than they really possess, or refuses to make any book or post any notice required by law, in the manner required by law, is guilty of a felony.

What Directors Are Liable.

Pen. C. Sec. 572. The term "director," as used

in this chapter, embraces any of the persons having by law the direction or management of the affairs of a corporation, by whatever name such persons are described in its charter or known by law.

Pen. C. Sec. 568. Every director of a corporation or joint-stock association is deemed to possess such a knowledge of the affairs of his corporation as to enable him to determine whether any act, proceeding, or omission of its directors is a violation of this chapter.

Pen. C. Sec. 569. Every director of a corporation or joint-stock association, who is present at a meeting of the directors at which any act, proceeding, or omission of such directors, in violation of this chapter, occurs, is deemed to have concurred therein, unless he at the time causes, or in writing requires, his dissent therefrom to be entered in the minutes of the directors.

Pen. C. Sec. 570. Every director of a corporation or joint-stock association, although not present at a meeting of the directors at which any act, proceeding, or omission of such directors, in violation of this chapter, occurs, is deemed to have concurred therein, if the facts constituting such violation appear on the records or minutes of the proceedings of the board of directors, and he remains a director of the same company for six months thereafter, and does not within that time cause, or in writing require, his dissent from such illegality to be entered in the minutes of the directors.

Pen. C. Sec. 571. It is no defense to a prosecution for a violation of the provisions of this chapter, that the corporation was one created by the laws of another state, government, or country, if it was one carrying on business or keeping an office therefor within this state.

Powers to be Exercised by Organized Board.

Civil Code 305, p. 421, *supra*.

C. C. Sec. 308. Immediately after their elec-

tion, the directors must organize by the election of a president, who must be one of their number, a secretary, and treasurer. They must perform the duties enjoined on them by law and the by-laws of the corporation. A majority of the directors is a sufficient number to form a board for the transaction of business, and every decision of a majority of the directors forming such board made when duly assembled, is valid as a corporate act.

Time, Place and Notice of Meeting.

C. C. Sec. 320. When no provision is made in the by-laws for regular meetings of the directors and the mode of calling special meetings, all meetings must be called by special notice in writing, to be given to each director by the secretary, on the order of the president, or if there be none, on the order of two directors.

~~By-Laws~~—How Adopted.

C. C. 301, Corporations in California, p. 427. Every corporation formed under of by-laws for its gov-
Line 2—for "may" read "must, within one month after filing the constitution
articles of incorporation." of stockholders
NOTE—This change should also be inserted on p. 284. representing a majority subscribed cap-

C. C., Corporations in California, p. 427.

304. All by-laws adopted must be certified by a majority of the directors and secretary of the corporation, and copied in a legible hand, in some book kept in the office of the corporation, to be known as the "book of by-laws," and no by-law shall take effect until so copied, and the book shall then be opened to the inspection of the public during office hours of each day except holidays. The by-laws may be repealed or amended, or new by-laws may be adopted, at the annual meeting, or at any other meeting of the stockholders or members, called for that purpose by the directors, by a vote representing two thirds of the subscribed stock, or by two thirds of the members. The written assent of the holders of two thirds of the stock, or two thirds of the members if there be no capital stock, shall be effectual to repeal or amend any by-law, or to adopt additional by-laws. The power to repeal and amend the by-laws, and adopt new by-laws, may, by a similar vote at any such meeting, or similar written assent, be delegated to the board of directors. The power, when delegated, may be revoked by a similar vote, at any regular meeting of the stockholders or members. Whenever any amendment or new by-law is adopted, it shall be copied in the book of by-laws with the original by-laws, and immediately after them, and shall not take effect until so copied. If any by-law be repealed, the fact of repeal, with the date of the meeting at which the repeal was enacted, or written assent was filed, shall be stated in said book, and until so stated the repeal shall not take effect.

NOTE—This change should also be inserted on pages 285 and 286.

in this chapter, embraces any of the persons having by law the direction or management of the affairs of a corporation, by whatever name such persons are described in its charter or known by law.

Pen. C. Sec. 568. Every director of a corporation or joint-stock association is deemed to possess such a knowledge of the affairs of his corporation as to enable him to determine whether any act, proceeding, or omission of its directors is a violation of this chapter.

Pen. C. Sec. 569. Every director of a corporation or joint-stock association, who is present at a meeting of the directors at which any act, proceeding, or omission of such directors, in violation of this chapter, occurs, is deemed to have concurred therein, unless he at the time causes, or in writing requires, his dissent therefrom to be entered in the minutes of the directors.

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~~By-Laws~~—How Adopted.

C. C. 301, Corporations in California, p. 427. Every corporation formed under of by-laws for its gov-
Line 2—for "may" read "must, within one month after filing the constitution
articles of incorporation."
NOTE—This change should also be inserted on p. 284.

representing a majority of the subscribed capital stock, or of a majority of the members, if there is no capital stock, is necessary to adopt by-laws, if they are adopted at a meeting called for that purpose; and in the event of such meeting being called, two weeks' notice of the same by advertisement in some newspaper published in the county in which the principal place of business of the corporation is located, or if none is published therein, then in a paper published in an adjoining county, must be given by order of the acting president. The written assent of the holders of two thirds of the stock, or of two thirds of the members, if there is no capital stock, is effectual to adopt a code of by-laws without a meeting for that purpose.

C. C. Sec. 304. All by-laws adopted must be certified by a majority of the directors and secre-

tary of the corporation, and copied in a legible hand, in some book kept in the office of the corporation, to be known as the "book of by-laws," and the book must then be opened to the inspection of the public during office hours each day except holidays. The by-laws may be repealed or amended, or new by-laws may be adopted, at the annual meeting, or at any other meeting of the stockholders or members, called for that purpose by the directors, by a vote representing two thirds of the subscribed stock, or by two thirds of the members. The written assent of the holders of two thirds of the stock, or two thirds of the members if there is no capital stock, is effectual to repeal or amend any by-law, or to adopt additional by-laws. The power to repeal and amend the by-laws, and adopt new by-laws, may, by a similar vote at any such meeting, or similar written assent, be delegated to the board of directors. The power, when delegated, may be revoked by a similar vote, at any regular meeting of the stockholders or members. Whenever any amendment or new by-law is adopted, it must be copied in the book of by-laws with the original by-laws, and immediately after them. If any by-law is repealed, the fact of repeal, with the date of the meeting at which the repeal was enacted, or written assent was filed, must be stated in said book. Until copied or stated as hereinbefore required, no by-law, nor any amendment or repeal thereof, can be enforced against any person, other than the corporation, not having actual notice thereof.

Subject Matter of By-Laws.

C. C. Sec. 303. A corporation may, by its by-laws, provide for:

1. The time, place, and manner of calling and conducting its meetings, and may dispense with notice of all regular meetings of stockholders or directors;

2. The number of stockholders or members constituting a quorum;
3. The mode of voting by proxy;
4. The qualifications and duties of directors, and also the time of their annual election, and the mode and manner of giving notice thereof;
5. The compensation and duties of officers;
6. The manner of election and the tenure of office of all officers other than the directors;
7. Suitable penalties for violations of by-laws, not exceeding, in any case, one hundred dollars for any one offense;
8. The newspaper in which all notices of the meetings of stockholders or board of directors, notice of which is required, must be published, which must be some newspaper published in the county where the principal place of business of the corporation is located, or if none is published therein, then in a newspaper published in an adjoining county; provided, that when the by-laws prescribe the newspaper in which said publication shall be made, if from any cause, at the time any publication is desired to be made, the publication of such newspaper shall have ceased, the board of directors may, by an order entered on the records of the corporation, direct the publication to be made in some other newspaper published in the county, or if none is published therein, then in an adjoining county.

Election of Directors—Method.

Civil Code 318, p. 417, supra.

Civil Code 290, p. 376, supra.

Election of Directors.

C. C. Sec. 302. The directors of a corporation must be elected annually by the stockholders or members, and if no provision is made in the by-laws for the time of election, the election must be held on the first Tuesday in June. Notice of such election must be given as prescribed in section three hundred and one.

Civil Code 312, p. 418, supra.

Civil Code 314, p. 419, supra.

Civil Code 307, p. 419, supra.

Contesting Elections.

C. C. Sec. 315. Upon the application of any person or body corporate aggrieved by any election held by any corporate body, the superior court of the county in which such election is held must proceed forthwith to hear the allegations and proofs of the parties, or otherwise inquire into the matters of complaint, and thereupon confirm the election, order a new one, or direct such other relief in the premises as accords with right and justice. Upon filing the petition, and before any further proceedings are had under this section, five days' notice of the hearing must be given, under the direction of the court or the judge thereof, to the adverse party, or those to be affected thereby.

Directors—How Removed.

C. C. Sec. 310. The board of directors may be removed from office by a vote of two thirds of the members, or of stockholders holding two thirds of the capital stock, at a general meeting held after previous notice of the time and place, and of the intention to propose such removal. Meetings of stockholders for this purpose may be called by the president, or by a majority of the directors, or by members or stockholders holding at least one half of the votes. Such calls must be in writing, and addressed to the secretary, who must thereupon give notice of the time, place, and object of the meeting, and by whose order it is called. If the secretary refuses to give the notice, or if there is none, the call may be addressed directly to the members or stockholders, and be served as a notice, in which case it must specify the time and place of meeting. The notice must be given in the manner provided in section three hundred and one of this

title, unless other express provision has been made therefor in the by-laws. In case the board of directors is so removed, a new board may be elected at the same meeting.

CHAPTER XVII.—OTHER OFFICERS AND AGENTS.

How Elected or Appointed.

Powers.

Liability for Misrepresentation.

Penal Liability for False Public Reports.

How Elected or Appointed.

Civil Code 308, p. 426, *supra*.

C. C. Sec. 2307. An agency may be created, and an authority may be conferred, by a precedent authorization or a subsequent ratification.

C. C. Sec. 2319. An agent has authority: 1. To do everything necessary or proper and usual, in the ordinary course of business, for effecting the purpose of his agency; and,

2. To make a representation respecting any matter of fact, not including the terms of his authority, but upon which his right to use his authority depends, and the truth of which cannot be determined by the use of reasonable diligence on the part of the person to whom the representation is made.

Liability for Misrepresentation.

C. C. Sec. 316. Any officer of a corporation who wilfully gives a certificate, or wilfully makes an official report, public notice, or entry in any of the records or books of the corporation, concerning the corporation or its business, which is false in any material representation, shall be liable for all damages resulting therefrom to any person injured thereby; and if two or more officers unite or participate in the commission of

any of the acts herein designated, they shall be jointly and severally liable.

Penal Liability for False Public Reports.

Pen. Code 564, p. 425, supra.

CHAPTER XVIII—BOOKS AND RECORDS.

What Books Must be Kept.

Penalty for Refusal to Allow Inspection by Stockholders.

Penalty for Hampering Legislative Investigation.

What Books Must Be Kept.

Const. Art. XII, Sec. 14. Every corporation other than religious, educational or benevolent, organized or doing business in this state, shall have and maintain an office or place in this state for the transaction of its business, where transfers of stock shall be made, and in which shall be kept for inspection by every person having an interest therein, and legislative committees, books in which shall be recorded the amount of capital stock subscribed, and by whom; the names of the owners of its stock; and the amounts owned by them respectively; the amount of stock paid in, and by whom; the transfers of stock; the amount of its assets and liabilities, and the names and place of residence of its officers.

C. C. Sec. 377. All corporations for profit are required to keep a record of all their business transactions; a journal of all meetings of their directors, members, or stockholders, with the time and place of holding the same, whether regular or special, and if special, its object, how authorized, and the notice thereof given. The record must embrace every act done or ordered to be done; who were present and who absent; and, if requested by any director, member, or stockholder, the time shall be noted when he entered the meeting or obtained leave of absence there-

from. On a similar request the ayes and must be taken on any proposition, and a r thereof made. On similar request, the prote any director, member or stockholder, to any action or proposed action, must be entered in full—all such records to be open to the inspection of any director, member, stockholder or creditor of the corporation.

C. C. Sec. 378. In addition to the records required to be kept by the preceding section, corporations for profit must keep a book, to be known as the "Stock and Transfer Book," in which must be kept a record of all stock; the names of the stockholders or members alphabetically arranged; installments paid or unpaid; assessments levied and paid or unpaid; a statement of every alienation, sale, or transfer of stock made, the date thereof, and by and to whom; and all such other records as the by-laws prescribe. Corporations for religious and benevolent purposes must provide in their by-laws for such records to be kept as may be necessary. Such stock and transfer book must be kept open to the inspection of any stockholder, member or creditor.

Penalty for Refusal to Allow Inspection by Stockholders.

Pen. C. Sec. 565. Every officer or agent of any corporation, having or keeping an office within this state, who has in his custody or control any book, paper, or document of such corporation, and who refuses to give to a stockholder or member of such corporation, lawfully demanding, during office hours, to inspect or take a copy of the same, or of any part thereof, a reasonable opportunity so to do, is guilty of a misdemeanor.

Penalty for Hampering Legislative Investigation.

Pen. C. Sec. 558. Every officer, agent, or clerk of any corporation, or of any persons proposing to organize a corporation, or to increase the capital

stock of any corporation, who knowingly exhibits any false, forged, or altered book, paper, voucher, security, or other instrument of evidence, to any public officer or board authorized by law to examine the organization of such corporation, or to investigate its affairs, or to be allowed an increase of its capital, with intent to deceive such officer or board in respect thereto, is punishable by imprisonment in the state prison not less than three nor more than ten years.

CHAPTER XIX.—CREDITORS.

Unpaid Subscriptions to Stock a Fund for Creditors.

Unpaid Subscriptions to Stock a Fund for Creditors.

C. C. P. Sec. 544. All persons having in possession or under their control any credit, or other personal property belonging to the defendant, or owing any debts to the defendant, at the time of service upon them of a copy of the writ and notice, as provided in the last two sections, shall be, unless such property be delivered up or transferred, or such debts be paid to the sheriff, liable to the plaintiff for the amount of such credit, property, or debts, until the attachment be discharged, or any judgment recovered by him be satisfied.

CHAPTER XX.—STOCKHOLDER'S STATUTORY LIABILITY.

Nature of the Liability.

Three Year Statute of Limitation.

Extent of the Liability—How Determined.

Defenses—Payment.

Nature of the Liability.

Const. Art. XII, Sec. 2. Dues from corporations shall be secured by such individual liability of the corporators and other means as may be prescribed by law.

Const. Art. XII, Sec. 3, p. 423, supra.

C. C. 322, Corporations in California, p. 435. Each stockholder of a corporation is personally liable for such

The first sentence should read: "Each stockholder of a corporation is individually and personally liable for such proportion of its debts and liabilities, as the amount of stock or shares owned by him bears to the whole of the subscribed capital stock or shares of the corporation, and for a like proportion any of such debt or claim against the corporation."

by him. Each stockholder of a corporation is personally liable for such proportion of its debts and liabilities, as the amount of stock or shares owned by him bears to the whole of the subscribed capital stock or shares of the corporation. Any creditor of the corporation may institute joint or several actions against any of its stockholders, for the proportion of his claim payable by each, and in such action the court must ascertain the proportion of the claim or debt for which each defendant is liable, and a several judgment must be rendered against each, in conformity therewith. If any stockholder pays his proportion of any debt due from the corporation, incurred while he was such stockholder, he is relieved from any further personal liability for such debt, and if an action has been brought against him upon such debt, it must be dismissed, as to him, upon his paying the costs, or such proportion thereof as may be properly chargeable against him. The liability of each stockholder is determined by the amount of stock or shares owned by him at the time the debt or liability was incurred; and such liability is not released by any subsequent transfer of stock. The term stockholder, as used in this section, applies not only to such persons as

appear by the books of the corporation to be such, but also to every equitable owner of stock, although the same appears on the books in the name of another; and also to every person who has advanced the installments or purchase money of stock in the name of a minor, so long as the latter remains a minor; and also to every guardian, or other trustee, who voluntarily invests any trust funds in the stock. Trust funds in the hands of a guardian, or trustee, are not liable under the provisions of this section, by reason of any such investment; nor must the person for whose benefit the investment is made be responsible in respect to the stock until he becomes competent and able to control the same; but the responsibility of the guardian or trustee making the investment continues until that period. Stock held as collateral security, or by a trustee, or in any other representative capacity, does not make the holder thereof a stockholder within the meaning of this section, except in the cases above mentioned, so as to charge him with any proportion of the debts or liabilities of the corporation; but the pledgor, or person or estate represented, is to be deemed the stockholder, as respects such liability. In a corporation having no capital stock, each member is individually and personally liable for an equal share of its debts and liabilities, and similar actions may be brought against him, either alone or jointly with other members, to enforce such liability as by this section may be brought against one or more stockholders, and similar judgments may be rendered. The liability of each stockholder of a corporation formed under the laws of any other state or territory of the United States, or of any foreign country, and doing business within this state, is the same as the liability of a stockholder of a corporation created under the constitution and laws of this state.

Three Year Statute of Limitation.

C. C. P. Sec. 359. This title does not affect actions against directors or stockholders of a corporation, to recover a penalty or forfeiture imposed, or to enforce a liability created by law; but such actions must be brought within three years after the discovery by the aggrieved party of the facts upon which the penalty or forfeiture attached, or the liability was created.

Extent of the Liability—How Determined.

Civil Code 322, p. 435, supra.

Defenses—Payment.

Civil Code 322, p. 435, supra.

CHAPTER XXII.—DE FACTO CORPORATIONS.

How Created.

Defacto Corporation—How Created.

Civil Code 358, p. 382, supra.

CHAPTER XXIII.—FOREIGN CORPORATIONS.

Regulation in General.

Certified Copy of Charter to be Filed.

Obtaining Jurisdiction Over Foreign Corporations.

Actions by Foreign Corporations.

Designation of Resident-Agent.

Right to Plead Statutes of Limitation.

Regulation in General.

Const. Art. XII., Sec. 15. No corporation organized outside the limits of this state shall be allowed to transact business within this state on more favorable conditions than are prescribed by law to similar corporations organized under the laws of this state.

Certified Copy of Charter to Be Filed.

[Stats. 1901, Chap. XCIII, p. 108, State ed.]

Section 1. Corporations organized under the

laws of another state, territory, or of a foreign country, which are now doing business in this state, or which shall hereafter enter this state to do business, or maintain an office in this state, shall file in the office of the secretary of state of the state of California a certified copy of their articles of incorporation, or of their charters or of the statutes or legislative or executive or governmental act creating them in cases where they are created by charters or statutes or legislative or executive or governmental acts, and a certified copy thereof, duly certified by the secretary of state of this state, in the office of the county clerk of the county where its principal place of business is located and also where such corporation owns property.

Sec. 2. For filing and issuing certified copy as required in section one of this act, corporations formed under the laws of another state, or of a territory, or of a foreign country, shall pay the same fees as are paid by corporations formed under the laws of this state.

Sec. 3. Every foreign corporation amenable to the provisions of this act which shall neglect or fail, within ninety days from the date of passage of this act, to comply with the conditions of the same as herein provided shall be subject to a fine of not less than five hundred dollars, to be recovered before any court of competent jurisdiction; and it is hereby made the duty of the secretary of state, as he may be advised that the corporations are doing business in contravention of this act, to report the fact to the governor, who shall instruct the district attorney of the county wherein such corporation has its principal business, or the attorney-general of the state, or both, as soon as practicable, to institute proceedings to recover the fine herein provided for, and the amount so recovered must be paid into the state treasury to the credit of the general fund of the state; in addition to which penalty, no

foreign corporation as above defined which shall fail to comply with this act, can maintain any suit or action, either legal or equitable, in any of the courts of this state upon any demand, whether arising out of contract or tort, until it has complied with this act; provided, that any corporation described in section one of this act, which is now doing business in this state, and which has complied with the act in relation to foreign corporations, approved April first, eighteen hundred and seventy-two, and an act amendatory thereof, approved March seventeenth, eighteen hundred and ninety-nine is exempted from the provisions of this act.

Sec. 4. This act shall take effect and be in force from and after the date of its passage.

Obtaining Jurisdiction Over Foreign Corporations.

Civil Code 404, p. 383, *supra*.

Actions by Foreign Corporations.

C. C. P. Sec. 1036. When the plaintiff in an action or special proceeding resides out of the state, or is a foreign corporation, security for the costs and charges, which may be awarded against such plaintiff, may be required by the defendant. When required, all proceedings in the action or special proceeding must be stayed until an undertaking, executed by two or more persons, is filed with the clerk, to the effect that they will pay such costs and charges as may be awarded against the plaintiff by judgment, or in the progress of the action or special proceeding, not exceeding the sum of three hundred dollars. A new or an additional undertaking may be ordered by the court or judge, upon proof that the original undertaking is insufficient security, and proceedings in the action or special proceeding stayed until such new or additional undertaking is executed and filed.

Designation of Resident-Agent.

C. C. Sec. 405. Every corporation other than those created by or under the laws of this state

must, within forty days from the time it commences to do business therein, file in the office of the secretary of state a designation of some person residing within the state upon whom process issued by authority of or under any law of this state may be served. A copy of such designation, duly certified by the secretary of state, is sufficient evidence of such appointment and of the due incorporation of such corporation. Such process may be served on the person so designated, or, in the event that no such person is designated, then on the secretary of state, and the service is a valid service on such corporation.

Right to Plead Statutes of Limitation.

C. C. Sec. 406. Every corporation which complies with the provisions of this chapter is thereafter entitled to the benefit of the laws of this state limiting the time for the commencement of civil actions, but no corporation not created by or under the laws of this state is entitled to the benefit thereof, nor can any such corporation maintain or defend any action or proceeding in any court of this state until the corporation has complied with the provisions of the preceding section. In any action or proceeding instituted against any body styled as a corporation, but not created by nor under the laws of this state, evidence that such body has acted as a corporation, or employed methods usually employed by corporations, must be received by the court for the purpose of proving the existence of such corporation, the sufficiency of such evidence to be determined by the court with like effect as in other cases. Every corporation which has complied with the laws then in force, requiring it to make and file a designation of the person upon whom process against it may be served, need not make or file any further designation. Any designation heretofore or hereafter made may be revoked by the filing by the corporation with the secretary of state of a writing stating such revocation.

Within forty days after the death or removal from the state of any person designated by the corporation, or after the revocation of the designation, the corporation must make a new designation, or be subject to the provisions and penalties of this chapter.

Banking Corporations.

To be Created Under General Laws.

Can Elect to Have a Capital Stock.

Disposition of Unclaimed Deposits at Dissolution.

Shares of National Banks to be Taxed.

How and to Whom Assessed.

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Annual Statement of Unclaimed Deposits.

Stock and Transfer Book to be Kept Open for Inspection.

To Be Created Under General Laws.

Const. Art. XII, Sec. 5. The legislature shall have no power to pass any act granting any charter for banking purposes, but corporations or associations may be formed for such purposes under general laws. No corporation, association or individual shall issue or put into circulation, as money, anything but the lawful money of the United States.

Can Elect to Have a Capital Stock.

C. C. Sec. 300. Every corporation that has been or may be created under the general laws of this state, doing a banking business therein, and which has no capital stock, may elect to have a capital stock, and may issue certificates of stock therefor in the same manner as corporations formed under the provisions of chapter one, article one, of the Civil Code, relating to the formation of corporations: provided, that no such corporation shall use or convert any moneys or funds theretofore belonging to it or under its control into capital stock, but such funds or moneys must be held and managed only for the purposes and in the manner for which they were created. Before such change is made, a majority of the members of such corporation present at a meeting called for the purpose of considering the proposition whether it is best to have a capital stock, its amount, and the number of shares into which it shall be divided, must vote in favor of having a capital stock, fix the amount thereof, and the number of shares into which it shall be divided. Notice of the time and place of holding such meeting and its object must be given by the president of such corporation by publication in some newspaper printed and published in the county, or city and county, in which the principal place of business of the corporation is situated, at least once a week for three successive weeks prior to the holding of the meeting. A copy of the proceedings of this meeting, giving the number of persons present, the votes taken, the notice calling the meeting the proof of its publication, the amount of capital actually subscribed, and by whom, all duly certified by the president and secretary of the corporation, must be filed in the offices of the secretary of state and clerk of the county where the articles of incorporation are filed. Thereafter such corporation is possessed of all the rights and powers, and is subject to all

the obligations, restrictions, and limitations, as if it had been originally created with a capital stock. And provided, further, that no bank in this state shall ever pay any dividend, upon so-called guaranty notes nor upon any stock except upon the amount actually paid in money into said capital upon such stock, and any payment made in violation of this provision shall render all officers and directors consenting to the same jointly and severally liable to the depositors, to the extent thereof.

Disposition of Unclaimed Deposits at Dissolution.

C. C. P. Sec. 1234. If the applicant is a savings and loan association, or engaged in the business of receiving money on deposit, and there is any unclaimed deposit or dividend in its hands belonging to a person whose whereabouts are unknown to the trustees, directors, or other officers presenting the application, the application must set forth the name of the person making such deposit, or entitled to such dividend, the time when such deposit was made or dividend declared, the residence, if known, of such person at the time of such deposit, the amount of such deposit or dividend, and the fact that the whereabouts of such person are unknown. The same facts must be stated in the notice of the application given by the clerk. If, at any time before the expiration of the time of publication, any person files a claim to such deposit or dividend, the court must, at the hearing and upon five days notice to him, hear and determine his claim, and, if such claim is established, order such money to be paid to him. All such deposits or dividends not so claimed, or as to which no claim shall be established, must, upon order of the court, be paid into the state treasury, accompanied with a copy of the order, which must set forth the facts hereinbefore required to be stated concerning such deposits or dividends; and, upon production of the treasurer's receipt for such payment, the court

may proceed to declare the corporation dissolved as in other cases. All unclaimed deposits and dividends so paid into the state treasury must be received, invested, accounted for, and paid out, in the same manner and by the same officers as is provided by law in the case of escheated estates, and in section twelve hundred and seventy-two.

Dissolution of Savings Banks.

An act for the voluntary dissolution of savings banks, Stats. 1891, p. 271.

Shares of National Banks to be Taxed.

Pol. C. Sec. 3609. The stockholders in every national banking association doing business in this state, and having its principal place of business located in this state, shall be assessed and taxed on the value of their shares of stock therein; and said shares shall be valued and assessed as is other property for taxation, and shall be included in the valuation of the personal property of such stockholders in the assessment of the taxes at the place, city, town, and county where such national banking association is located, and not elsewhere, whether the said stockholders reside in said place, city, town, or county, or not; but in the assessment of such shares, each stockholder shall be allowed all the deductions permitted by law to the holders of moneyed capital in the form of solvent credits, in the same manner as such deductions are allowed by the provision of paragraph six of section thirty-six hundred and twenty-nine of the Political Code of the State of California. In making such assessment to each stockholder, there shall be deducted from the value of his shares of stock such sum as is in the same proportion to such value as the total value of its real estate and property exempt by law from taxation bears to the whole value of all the shares of capital stock in said national bank. And nothing herein shall be construed to exempt the real

estate of such national bank from taxation. And the assessment and taxation of such shares of stock in said national banking associations shall not be at a greater rate than is made or assessed upon other moneyed capital in the hands of individual citizens of this state.

How and to Whom Assessed.

Pol. C. Sec. 3610. The assessor charged by law with the assessment of said shares shall, within ten days after he has made such assessment, give written notice to each national banking association of such assessment of the shares of its respective shareholders; and no personal or other notice to such shareholders of such assessment shall be necessary for the purpose of this act. And in case the tax on any such stock is unsecured by real estate owned by the holder of such stock, then the bank in which said stock is held shall become liable therefor; and the assessor shall collect the same from said bank, which may then charge the amount of the tax so collected to the account of the stockholder owning such stock, and shall have a lien, prior to all other liens, on his said stock, and the dividends and earnings thereof, for the reimbursment to it of such taxes so paid.

Loans of Savings Banks—On What Made.

C. C. Sec. 571. Corporations organized for the purpose of accumulating and loaning the funds of their members, stockholders, and depositors, may loan and invest the funds thereof, receive deposits of money, loan, invest and collect the same, with interest, and may repay depositors with or without interest. No such corporation must loan money, except on adequate security on real or personal property, and such loan must not be for a longer period than ten years.

Power to Issue Certificates of Deposit.

C. C. Sec. 576. Savings and loan corporations may issue general certificates of deposit, which

are transferable, as in other cases, by indorsement and delivery; may issue, when requested by the depositor, special certificates, acknowledging the deposit by the person therein named of a specified sum of money, and expressly providing on the face of such certificate that the sum so deposited and therein named may be transferred only on the books of the corporation; payment thereafter made by the corporation to the depositor named in such certificate, or to his assignee named upon the books of the corporation, or, in case of death, to the legal representative of such person, of the sum for which such special certificate was issued, discharges the corporation from all further liability on account of the money so paid.

C. C. Sec. 579. Receiving deposits, issuing certificates of deposit, checks and bills of exchange, and the like, in the transaction of the business of savings and loan corporations, must not be construed to be the creation of debts within the meaning of the phrase "create debts," in section 309.

Power to Take and Hold Property.

C. C. Sec. 574. Savings and loan corporations may purchase, hold, and convey real and personal property, as follows:

1. The lot and building in which the business of the corporation is carried on, the cost of which must not exceed one hundred thousand dollars; except, on a vote of two-thirds of the stockholders, the corporation may increase the sum to an amount not exceeding two hundred and fifty thousand dollars;

2. Such as may have been mortgaged, pledged, or conveyed to it in trust, for its benefit in good faith, for money loaned in pursuance of the regular business of the corporation;

3. Such as may have been purchased at sales under pledges, mortgages, or deeds of trust, made for its benefit, for money so loaned, and such as

may be conveyed to it by borrowers in satisfaction and discharge of loans made thereon;

4. No such corporation must purchase, hold, or convey real estate in any other case or for any other purpose; and all real estate described in subdivision three of this section must be sold by the corporation within ten years after the title thereto is vested in it by purchase or otherwise;

5. No such corporation must purchase, own, or sell personal property, except such as may be requisite for its immediate accommodation, for the convenient transaction of its business, mortgages on real estate, bonds, securities, or evidences of indebtedness, public or private, gold and silver bullion, and United States mint certificates of ascertained value, and evidences of debt issued by the United States;

6. No such corporation must purchase, hold, or convey bonds, securities, or evidences of debt, public or private, except bonds of the United States, of the state of California, and of the counties, cities, or towns, unless such corporation has a capital stock or reserved fund paid in, of not less than three hundred thousand dollars.

Rights and Liabilities of Stockholders.

C. C. Sec. 572. When savings and loan corporations have a capital stock specified in their articles of incorporation certificates of the ownership of shares may be issued; and the rights and privileges to be accorded to, and the obligations to be imposed upon, such capital stock as distinct from those of depositors, must be fixed and defined, either in the articles of incorporation or in the by-laws.

Married Women and Minors as Depositors in Savings Banks.

C. C. Sec. 575. Married women and minors may, in their own right, make and draw deposits and draw dividends, and give valid receipts therefor.

Power of Directors to Create Debts and Declare Dividends.

C. C. Sec. 573. The directors of savings and loan corporations may, at such times and in such manner as the by-laws prescribe, declare and pay dividends of so much of the profits of the corporation, and of the interest arising from the capital stock and deposits, as may be appropriated for that purpose under the by-laws or under their agreements with depositors. The directors must not contract any debt or liability against the corporation for any purpose whatever, except for deposits. The capital stock and the assets of the corporation are a security to depositors and stockholders, depositors having the priority of security over the stockholders, but the by-laws may provide that the same security shall extend to deposits made by stockholders.

Definition of phrase "Create Debts."

Civil Code 579, p. 447, supra.

Directors Not to Borrow From the Corporation.

C. C. Sec. 578. No director or officer of any savings and loan corporation must, directly or indirectly, for himself or as the partner or agent of others, borrow any of the deposits or other funds of such corporation, nor must he become an indorser or surety for loans to others, nor in any manner be obligor for moneys borrowed of or loaned by such corporation. The office of any director or officer who acts in contravention of the provisions of this section immediately thereupon becomes vacant.

Reserve Fund of Savings Banks.

C. C. Sec. 577. Savings and loan corporations may prescribe by their by-laws the time and conditions on which repayment is to be made to depositors; but whenever there is any call by depositors for repayment of a greater amount than the corporation may have disposable for that purpose, the directors or officers thereof

must not make any new loans or investments of the funds of the depositors, or of the earnings thereof, until such excess of call has ceased. The directors of any such corporation having no capital stock must retain, on each dividend day, at least five per cent of the net profits of the corporation, to constitute a reserve fund, which must be invested in the same manner as other funds of the corporation, and must be used toward paying any losses which the corporation may sustain in pursuing its lawful business. The corporation may provide by its by-laws for the disposal of any excess in the reserve fund over one hundred thousand dollars, and the final disposal, upon the dissolution of the corporation, of the reserve fund, or of the remainder thereof, after payment of losses.

Officer of Savings Bank, Overdrawing His Account, Guilty o

Pen. C. Sec. 561.

*Penal Code 561, Corporations in California, p. 450.
Last line, for "felony" read "misdemeanor."*

clerk of any savings bank, who draws his account with such bank, and thereby wrongfully obtains the money, note, or funds of such bank, is guilty of a felony.

Annual Statement of Unclaimed Deposits.

C. C. Sec. 580. The president of every savings bank, savings and loan society, and every other bank, depository, society, or institution in which deposits of money are made, whether any interest or dividend is paid, or agreed to be paid, thereon or not, must, within fifteen days after the first day of January of every odd-numbered year, return to the board of bank commissioners a sworn statement showing the amount placed to his credit, the last known place of residence or postoffice address, and the fact of death, if known to such president, of every depositor who has not made a deposit therein or withdrawn therefrom any part of his deposit, or any part of the interest or dividends thereon, for a period of more than ten years next preceding. Such president must give notice of

these deposits in one or more newspapers published in or nearest the town, city, or city and county where such bank, society, or other institution is situated or has its principal place of business, at least once a week for four successive weeks, the cost of such publication to be paid pro rata out of such unclaimed deposits. This section does not apply to any deposit made by or in the name of a person known to the president to be living, and which, with the accumulation thereon, is less than fifty dollars. The board of bank commissioners must incorporate in their subsequent report each return made to them as provided in this section. Any president or either of the institutions mentioned in this section who neglects or refuses to make the sworn statement required thereby is guilty of a misdemeanor.

**Section 321. Transfer Book to Be Kept Open for
ion.**

Sec. 321. Every corporation doing a banking business in this state must keep in its office, in a place accessible to the stockholders, depositors and creditors thereof, and for their use, a book containing a list of all stockholders in such corporation, and the number of shares of stock held by each; and every such corporation must keep posted in its office, in a conspicuous place, accessible to the public generally, a notice, signed by the president or secretary, showing: First, the names of the directors of such corporation; Second, the number and value of shares of stock held by each director. The entries on such book, and such notice shall be made and posted within twenty-four hours after any transfer of stock, and shall be conclusive evidence against each director and stockholder of the number of shares of stock held by each. The provisions of this section shall apply to all banking corporations, formed or existing before twelve o'clock noon of the day on which this code took effect, as well as to those formed after such time.

Benevolent Associations.

Not Subject to the Insurance Laws of the State.

How Created.

Articles of Incorporation—What to Contain.

Power to Take and Hold Property.

Power to Alienate Real Property.

Rights of Members Admitted After Incorporation.

Rights of Membership Not Transferable.

Powers of Directors.

Election and Removal of Directors.

Books and Reports.

Not Subject to the Insurance Laws of the State.

C.C. Sec. 451. All associations or secret orders, and other benevolent or fraternal co-operative societies, incorporated or organized for the purpose of mutual protection and relief of its members, and for the payment of stipulated sums of money to its members, or to the family of deceased members, and not for profit, are declared not to be insurance companies in the sense and meaning of the insurance laws of this state, and are exempt from the provisions of all existing insurance laws of this state.

How Created.

C. C. Sec. 593. Any number of persons associated together for any purpose, where pecuniary profit is not their object, and for which individuals may lawfully associate themselves, may, in accordance with the rules, regulations, or discipline of such association, elect directors, the number thereof to be not less than five nor more than eleven, and may incorporate themselves as provided in this title. [Sec. 593-607 C. C.]

Articles of Incorporation—What to Contain.

C. C. Sec. 594. In addition to the requirements of section 290 [C. C.] the articles of incorporation of any association mentioned in the preceding section must set forth the holding of the election for directors, the time and place where the same was held, that a majority of the members of such association were present and voted at such election, and the result thereof; which facts must be verified by the officers conducting the election.

Civil Code 290, p. 376, *supra*.

Power to Take and Hold Property.

C. C. Sec. 596. In addition to that provided for in the preceding section, friendly societies and pioneer associations may hold such real estate as may be necessary to carry out their charitable purposes, or for the establishment and endowment of institutions of learning connected therewith. In case any such corporation is the owner, by donation or purchase, of more lands than herein or in the preceding section provided for, such surplus must be sold and conveyed by the corporation within five years after its acquisition. Such sale may be made without the order or decree of the superior court, as hereinafter provided.

C. C. Sec. 595. All such corporations may hold all the property of the association owned prior to incorporation or acquired thereafter in any manner, and transact all business relative thereto; but no such corporation must own or hold more real estate than may be necessary for the business and objects of the association and providing burial ground for its deceased members, not to exceed six whole lots in any city or town, nor more than twenty acres in the country; the annual increase, income, or profit whereof must not exceed fifty thousand dollars. Any such corporation now or hereafter having, and having had continuously for the next preceding three years, the care, custody, control, and maintenance

each year upon an annual average of not less than one hundred orphans, half-orphans, and indigent minor children at any one orphan asylum, is entitled and allowed to own and possess any number of acres, not exceeding one hundred and sixty, of land in the country, outside of any incorporated city or town, the annual income or profit of which does not exceed fifty thousand dollars. Such orphan asylum must be situated on such lands. The limitations herein provided for do not apply to corporations formed, or to be formed, under section six hundred and two, when the land is held or used for churches, hospitals, schools, colleges, orphan asylums, parsonages, or cemetery purposes, or to corporation organized other than for profit, when the land is timber land, and not exceeding one hundred and sixty acres in extent, and is held or used for the purposes of the organization, in which case said land shall be subject to all laws regulating the preservation of forests.

Power to Alienate Real Property.

C. C. Sec. 598. Corporations of the character mentioned in section 593 may mortgage or sell the real property held by them, and may secure the payment of indebtedness by deed of trust or mortgage upon their real property, upon obtaining an order for that purpose from the superior court held in the county in which the property is situated. The corporations above mentioned may also issue bonds, payable at any time within twenty years, as evidence of the indebtedness secured by mortgage or deed of trust. Before making the order, proof must be made to the satisfaction of the court that notice of the application for leave to sell or mortgage or execute a deed of trust has been given by publication in such manner and for such time as the court or the judge has directed, and that it is to the interest of the corporation that leave should be granted as

prayed for. The application must be made by petition, and any member of the corporation may oppose the granting of the order by affidavit or otherwise. But nothing herein contained shall prohibit or prevent the trustees or directors of such corporation, under such rules and regulations as they may adopt from disposing of burial plots situated in grounds of such corporation dedicated for burial purposes, without making such application to or obtaining an order from court.

Rights of Members Admitted After Incorporation.

C. C. Sec. 600. Members admitted after incorporation have all the rights and privileges, and are subject to the same responsibilities, as members of the association prior thereto.

Rights of Membership Not Transferable.

C. C. Sec. 601. No member, or his legal representative, must dispose of or transfer any right or privilege conferred on him by reason of his membership of such corporation, or be deprived thereof, except as herein provided.

Powers of Directors.

Civil Code 305, p. 421, supra.

Election and Removal of Directors.

Civil Code 290, p. 376, supra.

Civil Code 305, p. 421, supra.

Civil Code 307, p. 419, supra.

Books and Reports.

Constitution, Art. XII, Sec. 14, p. 432, supra.

C. C. Sec. 597. The directors must annually make a full report of all property, real and personal, held by such corporation or by them in trust for such corporation, and of the condition thereof, to the members of the association for which they are acting.

Bridge, Wharf, Chute, Pier and Ferry Corporations.

Forfeiture of Charter for Failure to Commence Business.

Power to Take Tolls.

Annual Reports to be Made and Published.

Forfeiture of Charter for Failure to Commence Business.

C. C. Sec. 529. Every such corporation ceases to be a body corporate:

1. If, within six months from filing its articles of incorporation, it has not obtained such authority from the board of supervisors, or other governing body having authority in that behalf; and if, within one year thereafter, it has not commenced the construction of the bridge, wharf, chute, or pier, and actually expended thereon at least ten per cent. of the capital stock of the corporation;

2. If, within three years from filing the articles of incorporation, the bridge, wharf, chute, or pier is not completed;

3. If, when the bridge, wharf, chute, or pier of the corporation is destroyed, it is not reconstructed and ready for use within three years thereafter;

4. If the ferry of any such corporation is not in running order within three months after authority is obtained to establish it, or if at any time thereafter it ceases for a like term consecutively to perform the duties imposed by law.

Power to Take Tolls.

C. C. Sec. 528. No corporation must or take tolls on, a bridge, ferry, or pier until authority is granted

*See also Chapter 1, p. 135.
The corporation must, within six months after the date of its incorporation, file with the board of supervisors a statement of its assets and liabilities, and a statement of its proposed business.*

supervisors, or other governing body having authority in that behalf.

Annual Reports to Be Made and Published.

C. C. Sec. 530. The president and secretary of every bridge, ferry, wharf, chute, or pier corporation must annually, under oath, report to the board of supervisors, or other governing body having authority in that behalf, of the county in which the articles of incorporation are filed:

1. The cost of constructing and providing all necessary appendages and appurtenances for its bridge, ferry, wharf, chute, or pier;

2. The amount of all moneys expended thereon, since its construction, for repairs and incidental expenses;

3. The amount of its capital stock, how much paid in, and how much actually expended thereof;

4. The amount received during the year for tolls, and from all other sources, stating each separately;

5. The amount of dividends made, and the indebtedness of the corporation, specifying for what it was incurred;

6. Such other facts and particulars respecting the business of the corporation as the board of supervisors or other governing body having authority in that behalf may require.

This report the president and secretary must cause to be published for four weeks in a daily newspaper published nearest the bridge, ferry, wharf, pier, or chute, if required by order of the board of supervisors or other governing body having authority in that behalf. A failure to make such report subjects the corporation to a penalty of two hundred dollars, and for every

~~month~~ permitted to elapse after such failure an
sum of fifty dollars, payable in
from which the author-
was derived. All such

cases must be reported by the board of supervisors, or other governing body having authority in that behalf, to the district attorney or city attorney, who must commence an action therefor.

Mutual Building and Loan Associations.

Phrase "Building and Loan Association" Defined.

Articles of Incorporation—What to Contain.

Reorganization Under the Codes.

Bank Commissioners Have Jurisdiction Over.
Loans—How Made.

Loans—How Secured.

Power to Borrow.

Power to Acquire Real Estate.

Capital Stock to Be Paid in in Series.

Shareholders—Who Can Be.

Free Shares—How Retired.

Payment of Matured Shares.

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Profits and Losses to Be Apportioned.

By-Laws—What to Contain.

Annual Reports to the Bank Commissioners.

Regulation of Foreign Building and Loan Corporations.

Phrase "Building and Loan Association" Defined.

C. C. Sec. 648. The name "building and loan association," as used in this act, shall include all corporations, societies, or organizations or associations doing a savings and loan or investment business on the building-society plan, viz: loaning its funds to its members or its shareholders, and whether issuing certificates of stock which mature at a time fixed in advance or not.

Articles of Incorporation—What to Contain.

C. C. Sec. 633. Corporations may be formed subject to the provisions of this title, and with all the rights, duties, and powers herein specified. Such corporations shall be known as mutual build-

ing and loan associations, and the words "mutual building and loan association" shall form part of the name of every such corporation. The articles of incorporation, in setting forth the purposes for which the corporation is formed, shall state that it is formed to encourage industry, frugality, home building, and savings among the stockholders; the accumulation of savings; the loaning to its stockholders of the funds so accumulated, with the profits and earnings; and the repayment to each stockholder of his savings and profits, when they have accumulated to a certain sum, or at any time when he shall desire the same, as provided in the by-laws, or when the corporation shall desire to repay the same; and shall also state that it is formed for all the purposes specified in this title.

Reorganization Under the Codes.

C. C. Sec. 646. Any building and loan association, now existing and heretofore incorporated, desiring to continue its existence under the provisions of this title, may do so if the holders of a majority of the stock, at their regular annual meeting, or at a special meeting of the stockholders called for that purpose, shall so elect. The notice of the meeting, whether regular or special, shall state as one of the objects of the meeting to vote on the question whether the corporation shall continue its existence under the provisions of this title; and the notice of meeting shall be published as required by section three hundred and one; and, in addition thereto a similar notice shall be mailed to each stockholder at his postoffice address. Within thirty days after the holders of a majority of the stock at any such meeting have voted to continue the existence of the corporation under the provisions of this title, the secretary of the corporation shall, under oath, make and subscribe, as such secretary, a certificate, in writing, stating the calling of such meeting, the fact that the holders of a majority of the

stock voted to continue the existence of the corporation under this title, which shall be filed in the office of the county clerk in which its original articles of incorporation have been filed, and shall file in the office of the secretary of state a certified copy thereof, according to the provisions of section two hundred and ninety-six; and the secretary of state shall issue his usual certificate, as provided in said section. Thereupon, such corporation shall be subject to all the provisions of this title, as though originally incorporated under the provisions hereof, except that no change in its name or amount of capital stock shall be made; but the name shall be the same as contained in the original articles.

Bank Commissioners Have Jurisdiction Over.

C. C. Sec. 647. All corporations doing the business of building and loan associations in this state shall be subject to the provisions of this title relating to the bank commissioners. [Sec. 644.]

Loans—How Made.

C. C. Sec. 637. The moneys in the hands of the treasurer, and such sums as may be borrowed by the corporation for the purpose, shall be loaned out in open meeting to the member who shall bid the highest premium, or may be loaned at such premium as may be fixed from time to time, by the board of directors; and the premium may be deducted from the amount of the loan, or such proportion may be deducted as the by-laws shall provide, and in that case the balance of said premium shall be payable in such installments as the by-laws shall determine; provided, however, that where the premium is payable in installments, the number of installments into which the same is divided shall be uniformly applicable to all loans made by the corporation, and shall be payable at the times and in the manner as provided in the by-laws; and provided further,

that in no case shall the amount loaned exceed the matured value of the shares pledged to secure the loan.

Loans—How Secured.

C. C. Sec. 638. The rate of interest on all loans may be fixed by the by-laws; but in case the by-laws fail to fix the rate, then it shall be fixed from time to time by the board of directors. For every loan made a note or obligation secured by a first mortgage or deed of trust upon unincumbered real estate shall be given, accompanied by a transfer and pledge to the association of at least one share of stock as collateral security for the repayment of the loan, or in lieu of a mortgage or deed of trust there may be pledged and transferred to the association for the payment of the loan, free shares, the withdrawal value of which under the by-laws at the time of such borrowing shall exceed the amount borrowed and interest thereon for six months. At the discretion of the board of directors the borrower may repay the loan and all arrears and interest and fines thereon at any time upon surrender of the shares pledged for the loan.

Power to Borrow.

C. C. Sec. 641. Any such association ^{to} borrow money for the purpose

or paying withdrawals or m
debtedness thus incurred, r
time, exceed twenty-five per
of the association. Before
borrowed, the board of directors must, by a majority vote of all of its members, pass and record a resolution to that effect, and authorize the execution and delivery of the notes or other obligations of the association, with or without security therefor.

C. C. Corporations in California, p. 467.

641. Any association organized in pursuance of the provisions of this act may borrow money for the purpose of making loans or paying withdrawals.

Power to Acquire Real Estate.

C. C. Sec. 640. Any such association may purchase at any sale, public or private, any real es-

tate upon which it may have a mortgage, judgment, lien, or other encumbrance, or in which it may have an interest; and may sell, convey, lease, or mortgage the same, at pleasure, to any person or persons.

Capital Stock to Be Paid in in Series.

C. C. Sec. 634. The capital stock of such corporations shall be paid in by the stockholders in regular, equal, periodical payments, at such times and in such amounts as shall be provided in the by-laws. Such periodical payments shall be called dues; and at or before a time to be stated in the by-laws, each stockholder shall pay to the corporation, upon each share of stock held by him, such an amount of dues as the by-laws shall provide; and the payment of dues shall so continue on each share of stock issued till it reaches its matured value, or is withdrawn, canceled, or forfeited. The capital stock shall consist of such accumulated dues, together with the earnings and profits of the corporation, and shall in no case exceed two million dollars, except as to corporations now existing. It shall be divided into shares of matured or par value of one dollar, or two hundred dollars each, as shall be provided in the charter of incorporation and fixed by the by-laws. Shares shall be issued to each stockholder in proportion to the amount of dues by him. The dues shall be payable quarterly, yearly, half-yearly, or quarterly, as shall be determined by the board of directors. No share of a prior series shall be issued after the issuing of shares in a new series. Shares which have not been pledged as a security for the repayments of a loan shall be called free shares. Shares that have been so pledged shall be called pledged shares. All stock matured and surrendered or canceled in any series shall become the property of the corporation, and may be issued in any subsequent series. Payment of

dues on shares of stock in each series shall commence from the time that shares began to be issued in such series. Any such corporation shall have power by its by-laws to impose and collect a fine from each stockholder not exceeding ten per cent of the defaulted amount, for every neglect or refusal to make his payment of dues, or premium, or interest, when due, and to impose and collect a like fine successively on every regular pay-day during such default. Every such corporation hereafter formed shall also have power to charge an entrance fee upon each share of stock issued, not exceeding ten cents on each share, and may also charge a transfer fee not exceeding ten cents on each share, all of which shall be paid into the treasury and accounted for as all other funds of the association; provided, that building and loan associations heretofore incorporated may continue to charge and dispose of such entrance and transfer fees as are prescribed by the by-laws of such corporation. Payment of dues or interest may be made in advance, but no association shall allow interest on such advance payments at a greater rate than six per cent per annum, nor for a longer period than one year.

Shareholders—Who Can Be.

C. C. Sec. 643. Any person of full age and sound mind may become a member of the association by taking one or more shares therein, and subscribing to the by-laws, and annexing to his signature his postoffice address. A minor may hold shares in the name of the parent, guardian, or next friend as trustee.

Free Shares—How Retired.

C. C. Sec. 635. The directors may, at their discretion, under the regulations of their by-laws, retire the free shares of stock, at any time after four years from the date of their issue, by enforcing the withdrawal of the same; but whenever there remains in any

series, at the expiration of five years after the date of its issue, an excess above one hundred free shares of the par value of two hundred dollars each, or two hundred free shares of the par value of one hundred dollars each, then it is the duty of the directors to retire annually twenty-five per centum of such excess existing at said expiration of five years after the date of its issue, so that no more than one hundred free shares shall remain in such series at the expiration of nine years from the date of its issue. No more than one half the monthly receipts must be used for that purpose; and thereafter the directors may, in their discretion, retire such other free shares as they consider to be for the best interest of the association. Whenever, under the provisions of this section, the withdrawal of shares is to be enforced, the shares to be retired must be determined by lot, drawn from all free shares in the series, as may be regulated by the by-laws, and the holders thereof must be paid the amount actually paid in, and the full amount of net earnings at the date of retirement.

Payment of Matured Shares.

C. C. Sec. 636. When the stock in any series shall have reached its matured value, payment of dues thereon shall cease, and all of the stockholders in such series who have borrowed from the association shall be entitled to have their securities returned to them, and a satisfaction of the mortgages made by them to the association; and the holders of free shares of stock in such series shall be paid out of the funds of the association the matured value thereof, with such rate of interest as shall be determined by the by-laws, at the time the board of directors shall declare the same matured until paid; but at no time shall more than one-third of the receipts of the association be applicable to the payment of matured shares, without the consent of the board of directors. The order of the payment of

the matured shares shall be determined by the by-laws.

Delinquent Shares.

C. C. Sec. 639. Whenever any member shall be six months in arrears in the payment of his dues upon free shares, the secretary shall give him notice thereof, in writing, and a statement of his arrearages, by mailing the same to him at the last postoffice address given by him to the association, and if he shall not pay the same within two months thereafter, the board of directors may, at their option, declare his shares forfeited; and at the time of such forfeiture, the withdrawal value thereof shall be determined and stated, and the defaulting member shall be entitled to withdraw the same without interest, upon such notice as shall be required of a withdrawing shareholder. Whenever a borrowing member shall be six months in arrears in the payment of his dues, or interest, or premium, the whole loan shall become due at the option of the board of directors; and they may proceed to enforce collection upon the securities held by the association. The withdrawal value, at the time of the commencement of the action, of all shares pledged as collateral security for the loan, shall be applied to the payment of the loan, and said shares, from that time, shall be deemed surrendered to the association.

Profits and Losses to Be Apportioned.

C. C. Sec. 642. Profits and losses shall be apportioned at least annually, and shall be apportioned to all the shares in each series outstanding at the time of such apportionment, according to the actual value of such shares as distinguished from their withdrawal value.

By-Laws—What to Contain.

Civil Code 638, p. 462, supra.

Annual Reports to the Bank Commissioners.

C. C. Sec. 644. Every association organized under the provisions of this act, and every other association doing a like business, shall annually make a full report, in writing, of the affairs and condition of such corporation, within thirty days after its annual meeting, to the bank commissioners of this state. Such report shall be verified by the oath of the officers making the same, and a copy of the same shall be delivered to every stockholder, from the office of the corporation, who may call for such report. Every association shall make any further reports which the said commissioners may require, and in such form and as to such matters relating to the condition and conducting of the business of the association as such commissioners may designate; and said bank commissioners may at any time examine into the affairs of any and every of said associations. Any wilful false swearing in making and verifying said reports shall be deemed perjury. Any such association which shall fail to furnish the bank commissioners any such report required, within thirty days after demand, shall forfeit the sum of ten dollars per day for every day such report shall be delayed or withheld, which may be recovered in an action brought by the attorney general in the name of the people of this state, and all moneys so recovered shall be paid to the treasurer of the state, who shall pay the same into the "bank commissioners' fund." The state bank commissioners shall annually publish a full report of the condition of all associations formed under the provisions of this title, and every other association doing a like business in this state, in the same manner as they are now required to do in reference to savings banks.

Regulation of Foreign Building and Loan Corporations.

C. C. Sec. 645. No mutual building and loan association, or company, association, or corpora-

tion organized under the laws of any other state or territory, to carry on business of a like character to that authorized by this title, shall be allowed to do business or to sell their stock in this state without first having deposited with the state controller or secretary of state the sum of fifty thousand dollars in money, or United States or municipal bonds of this state, or in mortgages upon real estate located within this state, as a guaranty fund for the protection and indemnity of residents of the state of California with whom such companies, associations, or corporations shall do business; the fund so deposited to be paid by the custodian thereof to the residents of California only, and not then until proof of claim by final judgment has been filed with the custodian of said fund against such foreign company, association, or corporation. Any of the securities so deposited may be withdrawn at any time upon others, herein provided for, of like amount being substituted in lieu thereof. Any person or persons who shall be found in this state as agent, or in any capacity, representing such foreign company, association, or corporation which has not complied with the provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine not exceeding one thousand dollars or by imprisonment in the county jail not exceeding twelve months, or by both such fine and imprisonment.

Canal Companies.

Are Common Carriers.

Must Not Unnecessarily Obstruct Highways.

Officers Not to be Interested Adversely to the Corporation.

Are Common Carriers.

Const. Art. XII, Sec. 17. All railroad, canal, and other transportation companies are declared to be common carriers, and subject to legislative control. Any association or corporation, organized for the purpose, under the laws of this state, shall have the right to connect at the state line with railroads of other states. Every railroad company shall have the right with its road to intersect, connect with or cross any other railroad, and shall receive and transport each the other's passengers, tonnage and cars, without delay or discrimination.

Must Not Unnecessarily Obstruct Highways.

C. C. Sec. 551. No canal, flume, or other appliance for the conducting of water must be so laid, constructed, or maintained as to obstruct any public highway; and every person or corporation owning, maintaining, operating, or using any such canal, flume, or appliance, crossing or running along any public highway, must construct, maintain, and keep in repair such bridges across the same as may be necessary to the safe and convenient use of such highway by the public; and on failure so to do, the board of supervisors of the county may construct or repair such bridge or bridges, and recover of such person or corporation the amount of the expenditure made in so doing.

Officers Not to Be Interested Adversely to the Corporation.

Const. Art. XII, Sec. 18. No president, director, officer, agent, or employee of any railroad or canal company shall be interested, directly or indirectly, in the furnishing of material or supplies to such company, nor in the business of transportation as a common carrier of freight or passengers over the works owned, leased, controlled, or worked by such company, except such interest in the business of transportation as lawfully flows from the ownership of stock therein.

Cemetery Associations.

- Conveyances to be Executed by President, or Vice-President, and Secretary, in the Name of the Corporation and Under Its Seal.

Power to Issue Bonds.

Power to Take and Hold Land.

Power to Acquire Personalty.

Power to Take in Trust.

Power to Sell Land.

Title to Burial Plats Inalienable, Except.

Rights of Plat-Owners.

Election of Directors—Who Can Vote.

Conveyances to Be Executed by President, or Vice-President, and Secretary in the Name of the Corporation and Under Its Seal.

Statutes 1895, p. 75.

Power to Issue Bonds.

C. C. Sec. 611. Such corporations may issue their bonds, bearing interest not exceeding twelve per cent. per annum, for the purchase of lands for their cemeteries, payable out of the proceeds of the cemetery, and not otherwise. Sixty per cent. of the proceeds of sales of lots, plats, and graves must be applied at least every three months to the payment of the bonds and interest. Such corporations may also agree with the person or persons from whom cemetery lands shall be purchased, to pay for such lands, as the purchase price thereof, any specified share or portion, not exceeding one-half, of the proceeds of all sales of lots or plats made from such lands; such payment to be made at such intervals as may be agreed upon. In all cases where cemetery lands shall be purchased and agreed to be paid for in the manner last provided, the prices for lots or

plats specified in the by-laws, rules, or regulations first adopted by such association, or prescribed in the agreement between the cemetery and the person or persons from whom the cemetery lands were purchased, shall not be changed without the written consent of a majority in interest of the persons from whom such lands were purchased, their heirs, representatives, or assigns.

Power to Take and Hold Land.

C. C. Sec. 608. Corporations organized to establish and maintain cemeteries may take, by purchase, donation, or devise, land, not exceeding three hundred and twenty acres in extent, in the county wherein their articles of incorporation are filed, or in an adjoining county, and may employ any surplus moneys in the treasury thereof for such purpose; such lands to be held and occupied exclusively as a cemetery for the burial of the dead. The lands must be surveyed and subdivided into lots or plats, avenues, and walks, under order of the directors, and a map thereof filed in the office of the recorder of the county wherein the lands are situated. Thereafter, upon such terms and subject to such conditions and restrictions, to be inserted in the conveyances, as the by-laws or directors may prescribe, the directors may sell and convey the lots or plats to purchasers.

Power to Acquire Personalty.

C. C. Sec. 610. Such corporations may hold personal property to an amount not exceeding five thousand dollars, in addition to the surplus remaining from the sales of lots or plats after the payments required in the succeeding section. Such surplus must be disposed of in the improvement, embellishment, and preservation of the cemetery, and paying incidental expenses of the corporation, and in no other manner.

Power to Take in Trust.

C. C. Sec. 616. Any corporation organized to establish and maintain, or to improve, a ceme-

tery, may take and hold any property bequeathed, granted, or given to it in trust, to apply the proceeds or income thereof to any and all of the following purposes: To the improvement or embellishment of such cemetery or of any lot therein; or to the erection, renewal, repair, or preservation of any monument, fence, or other structure in such cemetery; or to the planting or cultivation of trees, shrubs, or plants in or around such cemetery, or any lot therein; or to the improving, ornamenting, or embellishing of such cemetery, or any lot therein, in any other mode or manner not inconsistent with the purposes for which such cemetery was established or is being maintained. Such property and the proceeds or income thereof shall be invested and reinvested in bonds of the United States, or of this state, or of any municipality of this state, or in first mortgages on real estate, or in centrally located income-producing improved real estate in any city, or city and county in this state, if such investment is not repugnant to the terms of the bequest, grant or gift.

C. C. Sec. 612. Any corporation organized to establish and maintain, or to improve, a cemetery, may take and hold title to any cemetery lot, plat or grave, devised or given to it in trust for the specific purpose of perpetually caring for the same.

Power to Sell Land.

C. C. Sec. 615. Cemetery corporations may sell lands held by them upon obtaining an order for that purpose from the superior court of the county where the lands are situated. Before making the order proof must be made to the satisfaction of the court that notice of the application for leave to sell has been given by publication in such manner and for such time as the court has directed, and that the lands are not required for and are not in use for burial purposes, and that it is for the interest of the corporation that such lands

be sold. The application must be made by petition, and any member of the corporation may oppose the granting of the order by affidavit or otherwise.

Title to Burial Plats Inalienable, Except.

C. C. Section 613. Whenever an interment is made in any lot or plat transferred to individual owners by the corporation, the same thereby becomes forever inalienable, and descends in regular line of succession to the heirs at law of the owner. When there are several owners of interests in such lot or plat, one or more may acquire by purchase the interest of others interested in the fee simple title thereof, but no one not an owner acquires an interest or right of burial therein by purchase; nor must any one be buried in any such lot or plat not at the time owning an interest therein, or who is not a relative of such owner, or of his wife, except by consent of all jointly interested; provided, however, that when all the bodies buried in any such lot have been removed therefrom, with the consent of a majority of the board of directors of the corporation owning said cemetery, it is lawful for the then owners of such lot, with the consent of a majority of said directors, to sell and transfer the same by deed; and any such sale and transfer, heretofore made, is hereby declared to be valid and effectual to transfer the title to the purchaser, any law to the contrary thereof notwithstanding.

Rights of Plat-Owners.

C. C. Sec. 614. When grounds purchased or otherwise acquired for cemetery purposes have been previously used as a burial ground, those who are lot owners at the time of the purchase continue to own the same, and are members of the corporation, with all the privileges a purchase of a lot from the corporation confers.

Election of Directors—Who Can Vote.

C. C. Sec. 609. Every person of full age who is proprietor of a lot or plat in the cemetery of the corporation, containing not less than two hundred square feet of land; or if there be more than one proprietor of any such lot, then such of the proprietors as the majority of joint proprietors designate, may, in person or by proxy, cast one vote at all elections had by the corporation for directors or any other purpose, and is eligible to any office of the corporation. At each annual meeting or election, the directors must make a report to the proprietors of all their doings, and of the management and condition of the property and concerns of the corporation.

Chambers of Commerce.

How Created.

Reorganization Under the Codes.

Power to Acquire and Alienate Property.

Stockholders and Members at Large.

Power to Levy Assessments.

Power of Directors or Executive Committee.

By-Laws—What to Contain.

How Created.

C. C. Sec. 591. Corporations for the formation and organization of chambers of commerce, boards of trade, mechanics' institutes, and other associations formed for the extension and promotion of trade and commerce, or the advancement, protection, and improvement of the mechanic arts, may be formed by twenty or more persons, who must execute and file articles of incorporation as prescribed in chapter one of title one of part four of this code. Upon receiving from the secretary of state a certificate of the filing with him of a certified copy of its articles of incorporation, such corporation becomes a body corporate, and by its corporate name has succession for the period limited in its articles, and power: (1) to sue and be sued in any court; (2) to make and use a common seal, and alter it at pleasure; (3) to lease, purchase, hold, sell, mortgage, convey in trust, convey, release from trust or mortgage, such real and personal property as hereinafter provided; (4) to elect and appoint such officers, agents, and servants as the business of the corporation may require; and (5) to make by-laws, not inconsistent with the laws of this state, providing for the organization of the corporation and the management of its affairs. No corpora-

tion formed under this title must engage in any mercantile, commercial, or mechanical business.

Reorganization Under the Codes.

C. C. Sec. 592e. Every corporation, association, or institution formed prior to the enactment of this title, for any of the purposes contemplated thereby, may, by a vote of the majority of its members voting at a meeting called for that purpose, become entitled to the benefit thereof on filing the certificate hereinafter required. Notice of such meeting and of its object must be published in a newspaper of general circulation in the county in which the principal place of business of the corporation, association, or institution is located, for at least two weeks before the day on which the meeting is to be held. Such certificate must be signed and acknowledged by at least five members of the corporation, association, or institution, must contain a list of the members who desire to become members, and must be filed with the county clerk of such county, and a copy thereof, certified by him, must be filed with the secretary of state. Thereupon such corporation, association, or institution possesses all the powers and privileges conferred by this title.

Power to Acquire and Alienate Property.

C. C. Sec. 592b. Every corporation formed under this title may lease, purchase, have, hold, use, take possession of, and enjoy in fee simple or otherwise any personal or real property within the state necessary for the uses and purposes of the corporation, and may sell, lease, deed in trust, alien, or dispose of the same at its pleasure.

Stockholders and Members at Large.

C. C. Sec. 592. Every corporation formed under this title may have a capital stock and issue certificates to represent the shares thereof, if the articles of incorporation contain a statement of the amount of its capital stock and the number

of shares into which it is divided. The rights and privileges to be accorded to stockholders are distinct from those to be accorded to members at large of the corporation, and the obligations to be imposed upon stockholders in the same relation must be fixed and established in the by-laws of the corporation.

Power to Levy Assessments.

C. C. Sec. 592d. Every corporation formed under the provisions of this title has power to levy and collect, from the members thereof, for the purpose of paying the proper and legal expenses of the corporation, assessments in such manner as may be prescribed by its by-laws, but not otherwise.

Powers of Directors or Executive Committee.

C. C. Sec. 592a. The corporation may confer upon a board of trustees or directors, or upon a body to be styled the executive committee of the corporation, the right to exercise all or any of the corporate powers, if the articles of incorporation state that the right to exercise the corporate powers is to be confided to such board of trustees or directors or to such executive committee, and the number of trustees, directors, or committee, and the names of those selected to take charge of the affairs of the corporation for the first six months.

By-Laws—What to Contain.

C. C. Sec. 592c. The by-laws of any corporation formed under this title without capital stock must prescribe how members of the corporation shall be admitted and how expelled, and how officers, agents, and servants shall be appointed. Such provisions in the by-laws have force and effect as between private parties and the corporation. All corporations formed under the provisions of this title must determine, by their by-laws, the manner of calling and conducting their meetings, the number of members that constitute

a quorum, the manner of levying and collecting assessments, the officers of the corporation, the manner of their election or appointment and their tenure of office, and may prescribe suitable penalties for the violation of such by-laws, not exceeding in any case one hundred dollars for any one offense.

Colleges.

Articles of Incorporation—What to Contain.

Consolidation of Colleges.

Consolidation—How Accomplished.

Power to Take by Will.

Power to Convey All the Corporate Property.

Election of Trustees and Power of the Board.

Articles of Incorporation—What to Contain.

C. C. Sec. 649. Any number of persons who may desire to establish a college or seminary of learning may incorporate themselves as provided in this part, except that in lieu of the requirements of section two hundred and ninety, the articles of incorporation shall contain:

1. The name of the corporation;
2. The purpose for which it is organized;
3. The place where the college or seminary is to be conducted;
4. The number of its trustees, which shall not be less than five nor more than fifteen, and the names and residences of the trustees. The term for which the trustees named and their successors are to hold office may also be stated. If it is desired that the trustees, or any portion of them, shall belong to any organization, society, or church, such limitation shall be stated;

5. The names of those who have subscribed money or property to assist in founding the seminary or college, together with the amount of money and description of property subscribed.

Consolidation of Colleges.

C. C. Sec. 652. Whenever any benevolent, religious, or fraternal organization or society, having a grand lodge, assembly, conference, or other legislative or representative head in the state of

California, having two or more colleges or institutions of higher education under its patronage, shall, for the purpose of greater efficiency and simplicity in the administration of its educational interests, desire to consolidate such institutions under one management, such organization or society shall be and is authorized to consolidate such institutions under one management by complying with the following provisions:—

First. Such grand lodge, assembly, conference, or other legislative or representative head having authorized a consolidation of its institutions, a new corporation shall be formed. The board of trustees of the new corporation shall at first consist of persons constituting the boards of trustees of the several institutions, respectively, thus consolidated, and others; provided, the number of trustees shall not exceed forty-five. The board of trustees shall be so classified that the term of office of one-third of its number shall expire each year; the successors of such trustees, as their terms expire, shall be elected by such grand lodge, assembly, conference, or other legislative or representative head at its annual meeting.

Second. The said board of trustees shall report annually to the grand lodge, assembly, conference or other legislative or representative head controlling it, the condition of affairs of such corporation and the amount and manner of its receipts and expenditures.

Consolidation—How Accomplished.

C. C. Sec. 653. The several boards of trustees of the institutions thus consolidated shall be and are hereby authorized and directed to transfer all property, real and personal, held by them, to the new corporation, as herein constituted, together with all powers, privileges, and authority conferred upon or enjoyed by them under their respective charters or acts of incorporation. The new corporation receiving such property shall assume all indebtedness and liabilities of such in-

stitutions as are thus consolidated, but shall not transfer such property from one location to another, except by an affirmative vote of not less than three-fourths of the said board of trustees of the new corporation, nor divert specific grants, donations, or bequests from the purposes for which such grants, donations, or bequests were made. That after the boards of trustees have conveyed the property, real and personal, of the various institutions to the new corporation, as hereinabove provided, and the same has been accepted by the said new corporation, then the franchises held by the corporations thus consolidating shall cease, and the said corporations shall be thereby dissolved.

Power to Take by Will.

Civil Code 1275, p. 396, *supra*.

Power to Convey All the Corporate Property.

C. C. Sec. 651. Any educational corporation, or body claiming to be such, now existing, may, by a unanimous vote of those of its trustees present at a special meeting called for that purpose, and of which due notice shall be given to each trustee, convey all its property, rights, and franchises to a corporation organized under this title. The fact that due notice of the meeting was given to each trustee shall be conclusively proven by the entries in the minutes of the corporation or body making the conveyance. Said minutes shall be certified to be correct by the president and secretary.

Election of Trustees and Power of the Board.

C. C. Sec. 650. Unless otherwise provided in the articles of incorporation the board of trustees shall, as soon as organized, so classify themselves that one-fifth of their number shall go out of office every year, and thereafter the trustees shall hold office for five years. A majority of the trustees shall constitute a quorum for the

transaction of business, and the office of the corporation shall be at the college or seminary.

The trustees shall have power:

1. To elect, by ballot, annually one of their number as president of the board;

2. Upon the death, removal out of the state, or other vacancy in the office, or expiration of the term of any trustee, to elect another in his place; provided, that where there are graduates of the institution, such graduates may, under such rules as the board shall prescribe, nominate persons to fill vacancies in the board of trustees. Such nominations shall be considered by the board, but it may reject any or all such nominations, and of its own motion appoint others;

3. To elect additional trustees; provided, the whole number elected shall never exceed fifteen at any one time;

4. To declare vacant the seat of any trustee who shall absent himself from eight succeeding meetings of the board;

5. To receive and hold, by purchase, gift, devise, bequest, or grant, real or personal property for educational purposes connected with the corporation, or for the benefit of the institution;

6. To sell, mortgage, lease, and otherwise use and dispose of the property of the corporation in such manner as they shall deem most conducive to the prosperity of the corporation;

7. To direct and prescribe the course of study and discipline to be observed in the college or seminary;

8. To appoint a president of the college or seminary, who shall hold his office during the pleasure of the trustees;

9. To appoint such professors, tutors, and other officers as they shall deem necessary, who shall hold their offices during the pleasure of the trustees.

10. To grant such literary honors as are usually granted by any university, college, or

seminary of learning in the United States, and in testimony thereof to give suitable diplomas under their seal, and the signature of such officers of the corporation and the institution as they shall deem expedient;

11. To fix salaries of the president, professors, and other officers and employes of the college or seminary;

12. To make all by-laws and ordinances necessary and proper to carry into effect the preceding powers and necessary to advance the interests of the college or seminary; provided, that no by-laws or ordinance shall conflict with the constitution or laws of the United States, or of this state.

Co-Operative Business Corporations.

By-Laws to Regulate Business.

Powers.

For What Purposes May Be Formed.

Articles of Association—What to Contain.

Due Incorporation Not to Be Collaterally Attacked.

Purpose of Business May Be Changed.

Power to Consolidate.

Voluntary Dissolution.

Nature of Members' Rights—Attachment and Execution.

Rights and Liabilities of Members.

Extent of Member's Right to Vote.

By-Laws—What Must Contain.

By-Laws to Regulate Business.

C. C. Sec. 653a. Cooperative business corporations may be formed for doing any lawful business, and dividing a portion of their profits among persons other than their stockholders. Each of such corporations may, in its by-laws, in addition to the matters specified in section three hundred and three, provide the amount of profits which must be divided among persons other than its stockholders, and the manner in which and the persons among whom such division may be made.

Civil Code 303, p. 428, supra.

Powers.

C. C. Sec. 653h. Every association formed under this title has power of succession by its associate name for fifty years; in such name to sue and be sued in any court; to make and use a common seal, and alter the same at pleasure.

receive by gift, devise, or purchase, hold, and convey real and personal property, as the purposes of the association may require; to appoint such subordinate agents or officers as the business may require; to admit associates or members, and to sell or forfeit their interest in the association for default of installments, or dues, or work, or labor required, as provided by the by-laws; to enter into any and all lawful contracts or obligations essential to the transaction of its affairs, for the purpose for which it was formed, and to borrow money, and issue all such notes, bills, or evidences of indebtedness or mortgage as its by-laws may provide for; to trade, barter, buy, sell, exchange, and to do all other things proper to be done for the purpose of carrying into effect the objects for which the association is formed.

For What Purposes May Be Formed.

C. C. Sec. 653b. Five or more persons may form a cooperative association for the transaction of any lawful business, whether for profit or not, or for the promotion of any educational, industrial, benevolent, social, or political purpose. Such association must not have any capital stock, but must issue membership certificates to each member. Such certificate cannot be assigned, so that the assignee can, by its transfer, become a member of the association, but, by a resolution of its board of directors, such certificate may be transferred, and the transferee made a member in lieu of the last former holder.

Articles of Association—What to Contain.

C. C. Sec. 653d. Every association formed under this title must prepare articles of association, in writing, stating: The name of the association, the purpose for which it is formed, the place where its principal business is to be transacted, the term for which it is to exist, not to exceed fifty years, the number of the directors thereof,

and the names and residences of those selected for the first year, the amount which each member is to pay upon admission as membership fee, and that each member signing the articles has actually paid in such sum, and that the interest and right of each member therein is to be equal. Such articles of association must be subscribed by the original associates or members, and acknowledged by each before some person competent to take an acknowledgment of a deed in this state. Such articles so subscribed and acknowledged must be filed in the office of the clerk of the county wherein the principal business of the association is to be transacted; and a copy thereof certified by such clerk, with the secretary of state, who must thereupon issue his certificate in the form, and having the effect prescribed in section two hundred and ninety-six [C. C.].

Due Incorporation Not to be Collaterally Attacked.

C. C. Sec. 653k. The right of any association claiming to be organized under this title to do business may be inquired into by quo warranto, at suit of the attorney general of this state, but not otherwise.

Purpose of Business May be Changed.

C. C. Sec. 653g. The purpose of the business may be altered, changed, modified, enlarged, or diminished by a vote of two-thirds of all the members, at a special election to be called for such purpose, of which notice must be given the same as the by-laws provide for the election of directors.

Power to Consolidate.

C. C. Sec. 653i. Two or more associations formed and existing under this title, or under any preexisting law authorizing their formation for the same purposes, may be consolidated, upon such terms, and for such purposes, and by such name, as may be agreed upon, in writing, signed by two-thirds of the members of each such asso-

ciation. Such agreement must also state all the matters necessary to articles of association, and must be acknowledged by the signers before an officer competent to take an acknowledgment of deeds in this state, and be filed in the office of the secretary of state, and a certified copy thereof in the office of the county clerk of the county where its principal business is to be transacted; and from and after the filing of such certified copy, the former associations comprising the component parts cease to exist, and the consolidated association succeeds to all the rights, duties, and powers of the component associations, and is possessed of all the rights, duties, and powers prescribed in the agreement of consolidated association not inconsistent with this title, and is subject to all the liabilities and obligations of the former component associations, and succeeds to all the property and interest thereof, and may make by-laws and do all things permitted by this title.

Voluntary Dissolution.

C. C. Sec. 653j. Any association formed or consolidated under this title may be dissolved and its affairs wound up voluntarily by the written request of two thirds of the members. Such request must be addressed to the directors, and must specify reasons why the winding up of the affairs of the association is deemed advisable, and must name three persons who are members to act in liquidation and in winding up the affairs of the association, a majority of whom must thereupon have full power to do all things necessary to liquidation; and upon the filing of such request with the directors, and a copy thereof in the office of the county clerk of the county where the principal business is transacted, all power of the directors ceases and the persons appointed must proceed to wind up the association, and realize upon its assets, and pay its debts, and divide the residue of its money among

the members, share and share alike, within a time to be named in said written request, or such further time as may be granted them by two-thirds of the members, in writing, filed in the office of said county clerk; and upon the completion of such liquidation the said association must be deemed dissolved. No receiver of any such association, or of any property thereof, or of any right therein, can be appointed by any court, upon the application of any member, save after judgment of dissolution for usurping franchises at the suit of the state of California by its attorney-general.

Nature of Member's Rights—Attachment and Execution.

C. C. Sec. 653f. The property of such association is subject to attachment and execution for its lawful debts. The interest of a member in such association, if sold upon execution, or any judicial or governmental order whatever, cannot authorize the purchaser to have any right, except to succeed, as a member in the association, with the consent of the directors, to the rights of the member whose interest is thus sold. If the directors choose to pay or settle the matter after such sale, they may either cancel the membership, and add the interest thus sold to the assets or common property of the association, or reissue the share or right to a new member upon proper payment therefor, as the directors may determine.

Rights and Liabilities of Members.

C. C. Sec. 653c. In such association the rights and interests of all members are equal, and no member can have or acquire a greater interest therein than any other member has. At every election held pursuant to the by-laws each member must be entitled to cast one vote and no more. All persons above the age of eighteen years, regardless of sex, are eligible to member-

ship, if otherwise qualified and elected as the by-laws may provide. The by-laws must provide for the amount of the indebtedness which such association may incur. And no member shall be responsible individually, or personally liable, for any of the debts or liabilities of the association in excess of his proportion of such indebtedness; but in case of the failure and insolvency of such association, may be required to pay any unpaid dues or installments which have, before such insolvency, become due from such member to the association, pursuant to its by-laws.

Extent of Member's Right to Vote.

Constitution, Art. XII, Sec. 12, p. 420, *supra*.

By-Laws—What Must Contain.

C. C. Sec. 653e. Every association formed under this title must, within forty days after it so becomes an association, adopt a code of by-laws for the government and management of the association, not inconsistent with this title. A majority of all the associates is necessary to the adoption of such by-laws, and the same must be written in a book, and subscribed by the members adopting the same, and the same cannot be amended or modified except by the vote of a majority of all the members, after notice of the proposed amendment, given as the by-laws may provide. Such association may, by its by-laws, provide for the time, place, and manner of calling and conducting its meetings; the number of directors, the time of their election, their term of office, the mode and manner of their removal, the mode and manner of filling vacancies in the board caused by death, resignation, removal, or otherwise, and the power and authority of such directors, and how many thereof are necessary to the exercise of the powers of such directors, which must be at least a majority; the compensation of any of the directors, or of any officer; the number of the officers, if any,

other than the directors, and their term of office; the mode of removal, and the method of filling a vacancy; the mode and manner of conducting business; the mode and manner of conducting elections, and may provide for voting by ballots forwarded by mail or otherwise, provided the method secures the secrecy of the ballot; the mode and manner of succession of membership, and the qualifications for membership, and on what conditions, and when membership must cease, and the mode and manner of expulsion of a member, subject to the right of an expelled member to have the board of directors appraise his interest in the association in either money, property, or labor, as the directors may deem best, and to have the money, property, or labor so awarded him paid, or delivered, or performed within forty days after expulsion; the amount of membership fee, and the dues, installments, or labor which each member must be required to pay or perform, if any, and the manner of collection or enforcement, and for forfeiting or selling of membership interest for nonpayment or nonperformance; the method, time, and manner of permitting the withdrawal of a member, if at all, and how his interest must be ascertained, either in money or property, and within what time the same must be paid or delivered to such member; the mode and manner of ascertaining the interest of a member at his death, if his legal representatives or none of them desire to succeed to the membership, and whether the same must be paid to his legal representatives in money, or property, or labor, and within what time the same must be paid, or delivered, or performed; such other things as may be proper to carry out the purpose for which the association was formed. The by-laws must provide for the time and manner in which profits must be divided among the members, and what proportion of the profits, if any, must be added to the common property or

funds of the association. But the by-laws may provide that the directors may suspend or pass the payment of any such profit, or installment of earnings, at their discretion. The by-laws and all amendments must be recorded in a book and kept in the office of the association, and a copy certified by the directors must be filed in the office of the county clerk where the principal business is transacted.

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Gas and Electric Corporations.

Regulation of Gas Supply of Cities or Towns.
Light to be Supplied to all Applicants, except.
Power of Agents to Enter Buildings or Premises.

Right of Company to Shut off Light on Failure of Consumer to Pay.

Regulation of Gas Supply of Cities or Towns.

C. C. Sec. 628. No corporation hereafter formed must supply any city or town with gas, or lay down mains or pipes for that purpose in the streets or alleys thereof, without permission from the city or town authorities, granted in pursuance of the provisions of the Political Code or of statutes expressly continued by such code. Nor must such corporation furnish or use any gas meter which has not been proved and sealed by the inspector of gas meters.

Light to be Supplied to All Applicants, Except.

C. C. Sec. 629. Upon the application in writing of the owner or occupant of any building or premises distant not more than one hundred feet from any main, or direct or primary wire, of the corporation, and payment by the applicant of all money due from him, the corporation must supply gas or electricity as required for such building or premises and cannot refuse on the ground of any indebtedness of any former owner or occupant thereof, unless the applicant has undertaken to pay the same. If, for the space of ten days after such application, the corporation refuses or neglects to supply the gas or electricity required, it must pay to the applicant the sum of fifty dollars as liquidated damages, and five dollars per day as liquidated damages for every day such refusal or neglect continues thereafter.

C. C. Sec. 630. No corporation is required to lay service pipe or wires where serious obstacles exist to laying them, unless the applicant, if required, deposits in advance, with the corporation, a sum of money sufficient to pay the cost of laying such service pipe, or wires, or his proportion thereof.

Power of Agents to Enter Buildings or Premises.

C. C. Sec. 631. Any owner or manager of gas or electric light works, or agent of such owner or manager, exhibiting written authority, signed by such owner or manager, or any agent of a gas or electric light corporation exhibiting written authority signed by the president or secretary thereof for such purpose, may enter any building or premises lighted with gas or electricity supplied by such owner or corporation, to inspect the gas meters or electric meters therein to ascertain the quantity of gas or electricity supplied or consumed. Every owner or occupant of such building who hinders or prevents such entry or inspection must pay to the owner or corporation the sum of fifty dollars as liquidated damages.

Right of Company to Shut Off Light on Failure of Consumer to Pay.

C. C. Sec. 632. All gas or electric light corporations may shut off the supply of gas or electricity from any person who neglects or refuses to pay for the gas or electricity supplied, or the rent of any meter, pipes, wires, or fittings, provided by the corporation, as required by his contract; and for the purpose of shutting off the gas or electricity in such case any employe of the corporation may enter the building or premises of such person, between the hours of eight o'clock in the forenoon and six o'clock in the afternoon, of any day, and remove therefrom any property of the corporation used in supplying gas or electricity.

Homestead Corporations.

Definition.

Disposition of Property at Dissolution.

Effect of Failure to Pay Premiums.

Power to Borrow.

No Power to Speculate in Lands.

Delinquent Shares to Be Sold at Auction.

By-Laws Must Specify Effect of Default in Payment of Dues.

Annual Report to Be Published.

Definition.

C. C. Sec. 557. Corporations organized for the purpose of acquiring lands in large tracts, paying off encumbrances thereon, improving and subdividing them into homestead lots or parcels, and distributing them among the shareholders, and for the accumulation of a fund for such purposes, are known as homestead corporations, and must not have a corporate existence for a longer period than ten years.

Disposition of Property at Dissolution.

C. C. Sec. 563. Except for the purpose of winding up and settling its affairs, every homestead corporation must terminate at the expiration of time fixed for its existence in the articles of incorporation, or when dissolved as provided in this part. No dividend of funds must be made on termination of its corporate existence, until its debts and liabilities are paid; and upon the final settlement of the affairs of the corporation, or upon the termination of its corporate existence, the directors, in such manner as they may determine, must divide its property among its shareholders in proportion to their respective interests, or, upon the application of a majority in inter-

est of the stockholders, must sell and dispose of any or all of the real estate of the corporation upon such terms as may be most conducive to the interests of all the stockholders, and must convey the same to the purchaser, and distribute the proceeds among the shareholders, or may at any time, when best for the interest of all the shareholders, cause the lands of the corporation to be subdivided into lots and distributed, by sale for premiums, at auction or otherwise, among the shareholders.

Effect of Failure to Pay Premiums.

C. C. Sec. 564. Such premiums on lots may be made payable at the time they are bid off, and, if not so paid on any lot of land, the directors may immediately offer the same for sale again. If made payable at a future day, and any shareholder fails to pay his bid on the day the same is made due and payable, the directors may advertise and sell the shares of stock representing the lots of land on which the premiums remain unpaid, in the manner provided in the by-laws for the sale of shares on account of delinquent installments and premiums.

Power to Borrow.

C. C. Sec. 560. Homestead corporations may borrow money for the purposes of the corporation, not exceeding at any one time one-fourth of the aggregate amount of the shares or parts of shares actually paid in, and the income thereof; no greater rate of interest must be paid therefor than twelve per cent per annum. For the purpose of completing the purchase of lands intended to be divided and distributed, they may borrow on the security of their shares on the land thus purchased, or that owned by the corporation at the time of procuring the loan, any sum of money which, together with the interest contracted to become due thereon, will not exceed ninety per cent of the unpaid amount subscribed by the

shareholders; but no loan must be made to the corporation for a term extending beyond that of its existence.

No Power to Speculate in Lands.

C. C. Sec. 562. Homestead corporations must not purchase and sell, or otherwise acquire and dispose of, real property, or any interest therein, or any personal property, for the sole purpose of speculation or profit. Nor must any such corporation at any one time own or hold, in trust or otherwise, for its purposes, real property, or any interest therein, which in the aggregate exceeds in cash value the sum of two hundred thousand dollars. For any violation of the provisions of this section corporations forfeit their corporate rights and powers. On the application of any citizen to a court or competent jurisdiction such forfeiture may be adjudged, and the judgment carries with it costs of the proceedings.

Married Women and Minors as Shareholders.

C. C. Sec. 561. Such shares of stock in homestead corporations as may be acquired by children, the cost of which, and the deposits and assessments on which are paid from the personal earnings of the children, or with gifts from persons other than their male parents, may be taken and held for them by their parents or guardians. Married women may hold such shares as they acquire with their personal earnings, or those of their children, voluntarily bestowed therefor, or from property bequeathed or given to them by persons other than their husbands.

Delinquent Shares to Be Sold at Auction.

C. C. Sec. 559. Whenever any shares of stock are declared forfeited by resolution of the board of directors, the directors may advertise the same for sale, giving the name of the subscriber and the number of shares, by notice of not less than three weeks, published at least once a week in a newspaper of general circulation in the city, town,

or county where the principal place of business of such corporation is located. Such sale must be made at auction, under the direction of the secretary of the company. The corporation may be a bidder, and the shares must be disposed of to the highest bidder for cash. No defect, informality, or irregularity in the proceedings respecting the sale invalidates it, if notice is given as herein provided. After the sale is made, the secretary must, on receipt of the purchase money, transfer to the purchaser the shares sold, and after deducting from the proceeds of such sale all installments then due, and all expenses and charges of sale, must hold the residue subject to the order of the delinquent subscriber.

By-Laws Must Specify Effect of Default in Payment of Dues.

C. C. Sec. 558. Such corporations must specify in their by-laws the times when the installments of the capital stock are payable, the amount thereof, and the fines, penalties, or forfeitures incurred in case of default. A printed copy of the articles of incorporation and by-laws must be furnished to any shareholder on demand.

Annual Report to be Published.

C. C. Sec. 565. The actual financial condition of all homestead corporations must, by the directors thereof, be published annually in [a] newspaper published at the principal place of business of the corporation, for four weeks, if published in a weekly, and two weeks, if published in a daily. The statement must be made up to the end of each year, and must be verified by the oath of the president and secretary, showing the items of property and the liabilities.

C. C. Sec. 566. In any case in which a publication is required, and no newspaper is published at the principal place of business, the publication may be made in a paper published in an adjoining county.

Insurance Corporations.

IN GENERAL.

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Bond From Agents of Foreign Insurance Corporations.

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Selection of Name.

Pol. C. Sec. 609. The commissioner must require the name under which any corporation hereafter proposes to be formed or organized under the laws of this state for the transaction of insurance business, to be submitted to him before the commencement of such business; and he may reject any name or title so submitted when the same is an interference with or too similar to one already appropriated, or likely to mislead the public in any respect; and in such a case a name not liable to such objection must be chosen.

Amount of Subscribed Capital Stock Required.

C. C. Sec. 419. Every company, corporation, association hereafter formed or organized

under the laws of this state for the transaction of insurance business in fire, marine, inland navigation, must have a subscribed capital stock equal to at least two hundred thousand dollars, twenty-five per cent of which must be paid up previous to the issuance of any policy, and the residue within twelve months from the filing of the certificate of incorporation; nor any company, corporation, or association organized or formed under the laws of this state or country, must transact insurance business in this state, unless it has a company, corporation, or association with available cash assets equal to at least one thousand dollars over and above all losses reported, expenses, taxes, and interest on all outstanding risks, as provided in section six hundred and two of the Political Code.

Penalties for Failure to Secure Certificate of Authority to do Business.

Pol. C. Sec. 596. No person or company must transact insurance business in this state without first procuring from the insurance commissioner a certificate of authority, as in this chapter provided; and all policies issued or renewed and all

insurances taken before obtaining such certificate of authority, are null and void; and any person who is agent or pretended agent of any insurance company, or other person, shall, without the possession of such certificate of authority, solicit, issue or procure to be issued in this state any policy of insurance, shall forfeit to the people of this state the sum of two hundred dollars for each and every policy so issued, or procured to be issued. But any company or corporation belonging to any other state or country, having policies of life insurance outstanding in this state, and that were issued in accordance with the laws of the state, shall have the right to maintain a suit in this state, for the collection of such policies, and the commission to be authorized to issue to the agent of such company a certificate authorizing the renewal premium; such company, on the production of satisfactory evidence that the corporation is authorized to transact insurance business in the state in which it belongs. And any person who fails to pay to the insured or insured renewal premiums, must, on or before the first of January, annually, submit to the commissioner a statement, under oath, of the amount of such annual premiums, and the amount of such annual premiums during the year ending on the thirty-first day of December, next preceding, and pay into the office of the commissioner the sum of twenty dollars, gold coin of the United States. Failing to make such statement and payment within the time named, such person shall forfeit to the people of the state of California the sum of one hundred dollars for each and every policy so renewed by the payment to him of such renewal premium. All penalties and forfeitures under this section must be collected by the in-

insurance commissioner, and for the purposes of such collections, suits may be instituted by him, in the name of the people of the state of California, in any court of competent jurisdiction.

Fees of Insurance Commissioner.

Pol. C. Sec. 605. The commissioner, must require in advance, in United States gold coin, the following fees:

1. For filing the articles of incorporation, or certified copy of articles, or other certificate required to be filed in his office, thirty dollars;

2. For filing the annual statement required to be filed, twenty dollars;

3. For filing any other papers required by this chapter to be filed, five dollars;

4. For furnishing copies of papers filed in his office, twenty cents per folio;

5. For certifying copies, one dollar each;

6. For each certificate issued as provided in section 619, the sum of five dollars.

Visitorial Power of Insurance Commissioner.

Pol. C. Sec. 597. The commissioner, whenever necessary, or whenever he is requested by verified petition, signed by three persons interested, either as stockholders, policy holders, or creditors of any person engaged in insurance business, showing that such person is insolvent under the laws of this state, must make examination of the business and affairs relating to the insurance business of such person; and for such purpose has free access to all the books and papers of such person and must thoroughly inspect and examine all his affairs, and ascertain his condition and ability to fulfill his engagements, and whether he has complied with all the provisions of the law applicable to his insurance transactions. Such person and his officers and agents must open his books and papers for the inspection of the commissioner, and otherwise facilitate such examination; and the commissioner may administer oaths and examine under oath, any persons relative to

the business of such person; and if he finds the books to have been carelessly or improperly kept or posted, he must employ sworn experts to re-write, post and balance the same, at the expense of such person. Such examination must be conducted in the county where such person has his principal place of business, and must be private, unless the commissioner deems it necessary to publish the result of such investigation, in which case he may publish the same in two of the public newspapers of this state, one of which must be published in the city of San Francisco.

Fines by Commissioner.

Pol. C. Sec. 598. The commissioner may collect the sum of five hundred dollars from any person engaged in the business of insurance, for each refusal to give full and truthful information, and response in writing, to any inquiry in writing by the commissioner relating to the business of insurance as carried on by him; and for that purpose suits may be instituted by the commissioner, in the name of the people of the State of California, in any court of competent jurisdiction.

Power of Commissioner to Subpoena Witnesses.

Pol. C. Sec. 599. The commissioner may issue subpoenas for witnesses to attend and testify before him on any subject touching insurance business, or in aid of his duties, which must be served, obeyed, and enforced as provided in the Code of Civil Procedure for civil cases; the commissioner to issue attachments and impose the penalty for disobedience; and, in addition, the defaulting witness may be punished as provided in the Penal Code.

Insolvent Companies to Discontinue.

Pol. C. Sec. 600. Whenever the commissioner ascertains that any person engaged in the insurance business is insolvent within the meaning of this chapter, he must revoke the certificate granted, and send by mail to such person, ad-

dressed to him at his principal place of business, or deliver to him personally, notice of such revocation, and cause notice thereof to be filed in his office, and also to be published daily for four weeks in some newspaper published in the city of San Francisco. He must require such person, after receiving notice of the revocation, or after the first publication thereof, to discontinue the issuing of any new policies, and the renewal of any previously issued; and in such cases must require the person, or the manager or agent of the business, to repair the capital thereof within such period as he may designate in such requisition, by assessment upon the stockholders for such amounts as will make the capital equal to the amount of the paid up capital, exclusive of assets needed to pay all ascertained liabilities for losses reported, for expenses and taxes, and exclusive of the entire premiums received for outstanding risks.

Compelling Discontinuance.

Pol. C. Sec. 601. In case any person, upon the requisition of the commissioner, fails to make up the deficiency of the capital in accordance with the requirements of this chapter, or to comply in all respects with the laws of this state, the commissioner must communicate the fact to the attorney general, who must commence an action in the name of the people of this state, in the superior court of the county where the person in question is located, or has his principal office, against such person, and apply for an order requiring cause to be shown why the business should not be closed; and the court must thereupon hear the allegations and proofs of the respective parties, as in other cases. If it appears to the satisfaction of the court that such person is insolvent, or that the interests of the public so require, the court must decree a dissolution of such corporation, and a winding-up of its affairs, and a distribution of the effects of such person; but otherwise, the court must enter a decree an-

nulling the act of the commissioner in the premises, and authorizing such person to resume business. But the commissioner must not be held liable for damages if he has acted in good faith. In the event of any additional losses occurring upon new risks taken after the expiration of the period limited by the commissioner in the requisition, and before the deficiency has been filled up, the directors of any company, corporation, or association, are individually liable to the extent thereof.

Funds—In What May be Invested.

C. C. Sec. 421. Corporations organized under the laws of this state, for the transaction of business in any kind of insurance, may invest their capital and accumulations in the following named securities:

1. In the purchase of or loans upon interest-bearing bonds of the United States government;
2. In the purchase of or loans upon interest-bearing bonds of any of the states of the United States, not in default for interest on such bonds;
3. In the purchase of or loans upon interest-bearing bonds of any of the counties or incorporated cities and towns of any state or territory of the United States, not in default for interest on such bonds;
4. In loans upon unincumbered real property, worth at least one hundred per cent more than the amount loaned; or upon merchandise or cereals in warehouse, but in no instance must such loan be made in excess of seventy-five per cent of the security taken;
5. In the purchase of, or loans upon, the stock of corporations, other than mining, which have at the time of the investment a market value of not less than sixty per cent of their par value, and are rated as first class securities; but every such purchase and loan must be approved by the vote of two-thirds of the directors; and no loan must exceed fifty per cent of such market value;

6. Such corporations may, after the investment of two hundred thousand dollars in the manner provided in subdivisions one, two, three, four, and five of this section, invest the balance of their capital and any accumulations in the purchase of, or loans upon, interest-bearing first mortgage bonds of any corporations, other than mining, organized and carrying on business under the laws of the United States, or of any state or territory thereof, or of the District of Columbia, not in default for interest on such bonds; provided, that a two-thirds vote of all the directors of such corporations approves such investment. It is the duty of the officers of such corporations to report quarterly on the first days of January, April, July, and October of each year, to the insurance commissioner, a list of such investments so made by them; and the insurance commissioner may, if such investments, or any of them, seem injudicious, require the sale of the same.

No investment in the securities named in subdivisions one, two, three, five, and six of this section, must be made in an amount exceeding the market value of such securities at the date of such investment.

7. Corporations engaged in the business of insuring titles to real estate may, after the investment of one hundred thousand dollars in the manner provided in subdivisions one, two, three, four, five, and six of this section, invest an amount not exceeding fifty per cent of their capital stock in the preparation or purchase of the materials or plant necessary to enable them to engage in such business; and such materials, or plant, must be deemed an asset, valued at the actual cost thereof, in all statements and proceedings required by law for the ascertainment and determination of the condition of such corporations.

Policies—Mode of Issuance.

C. C. Sec. 416. All policies made by insurance corporations, must be subscribed by the presi-

dent or vice-president, or in case of the death, absence or disability of those officers, by any two of the directors, and countersigned by the secretary of the corporation. All such policies are as binding and obligatory upon the corporation as if executed over the corporate seal.

Life Insurance Policies May be Registered With Insurance Commissioner.

Pol. C. Sec. 634. It shall be lawful for any company or corporation transacting the business of life insurance in this state to register with the insurance commissioner such of its policies as may be agreed upon by the company and the insured; such registration to consist in a written or printed list of such policies, filed with the commissioner, showing the name and age of the insured, number and date of the policy, and the kind and amount of insurance in each case. Such list must be filed with the commissioner within thirty days after the issuance of the first registered policy, and must contain all such policies issued up to the date of filing. After that date, the company must, within three days after the first day of each calendar month, file a statement embracing all its registered policies issued since the filing of its last preceding list. Upon filing such list of policies, from time to time, the company must deposit with the commissioner, as a special deposit for the benefit of such registered policies, securities of the denominations stated in section four hundred and twenty-seven of the Civil Code, as permissible for the investment of the capital and accumulations of life insurance companies. Such deposit must be in an amount equal to the full net value of all policies registered up to the time of making the deposit, and must at all times be equal to such net value of all the registered policies. Upon receipt of such securities, the commissioner must immediately deposit them in the state treasury, in accordance with the provisions of section six hun-

dred and eighteen of the Political Code, where they must remain as a special security for the benefit of said registered policies. Such company may, at any time, withdraw any excess of securities above the net present value hereinbefore specified, upon satisfying said commissioner, by written proof, that such excess exists, and shall be allowed to receive the interest on all securities deposited, and to exchange such securities, by substituting other securities of the character in which, by the laws of this state, it may invest its funds.

Power to Take and Hold Realty.

C. C. Sec. 415. No insurance corporation may purchase, hold, or convey real estate, except hereinafter set forth, to-wit:

1. Such as is requisite for its accommodation in the convenient transaction of its business;
2. Such as is conveyed to it, or to a person for it, by way of mortgage or in trust, otherwise, to secure or provide for the performance of loans previously contracted, or for making loans;
3. Such as is purchased at sales upon execution of trust or judgments obtained or made in connection with loans or debts;
4. Such as is conveyed to it in satisfaction of debts previously contracted in the course of its business dealings;

All such real estate so acquired, which is not requisite for the accommodation of such corporation in the transaction of its business, shall be sold and disposed of within five years after such corporation acquires title to the same.

Capital Stock to be Raised by Subscription.

C. C. Sec. 414. After the secretary of state issues the certificate of incorporation of any insurance corporation, as provided in article one, chapter one, title one, of this part, the directors named in the articles of incorporation must proceed in the manner specified

in their by-laws, or if none, then in such manner as they may by order adopt, to open books of subscription to the capital stock then unsubscribed, and to secure subscriptions to the full amount of the fixed capital; to levy assessments and installments thereon, and to collect the same, as in chapter two of title one provided. [C. C. 322-349.]

Amount of Capital Stock Required.

Civil Code 419, p. 500, supra.

Dividends—From What Made.

C. C. Sec. 429. No corporation formed subsequent to April first, eighteen hundred and seventy-eight under the laws of this state, and transacting inland navigation insurance business provided for by section four (420) of this code, except to real property, must make from profits remaining on unimpaired: subscribed capital stock. is received or receivable on inland risks, except marine

one-half of the amount of all other risks not terminated at such dividend.

to pay all losses reported or not, and all liabilities for ex-

Phrase "Net" Defined.

C. C. Sec. 417. The directors of every insurance corporation, at such time as its by-laws provide, must make, declare, and pay to the stockholders dividends of so much of the net profits of the corporate business and interest on capital invested as to them appears advisable; but the moneys received and notes taken for premium on risks which are undetermined and outstanding at the time of making the dividend must not be

treated as profits, nor divided, except as provided in chapter two of this title.

To Cease Business When Total Capital Stock Has Been Lost.

C. C. Sec. 418. If any insurance corporation is under liabilities for losses to an amount equal to its capital stock, and the president or directors, after knowing the same, make any new or further insurance, all who make such insurance, or assent thereto, are severally and jointly liable for the amount of any loss which takes place under such insurance.

Charter to be Filed With Commissioner.

Pol. C. Sec. 607. The commissioner must cause every corporation or person, before engaging in the business of insurance, to file in his office as follows:

1. If incorporated under the laws of this state, a copy of the articles of incorporation or statement of any increase or diminution of the capital stock, certified by the secretary of state to be a copy of that which is filed in his office.

2. If incorporated under the laws of any other state or country, a copy of the articles of incorporation, if organized or formed under any law requiring articles to be filed, duly certified by the officer having the custody of such articles; or if not so organized, a copy of the law, charter, or deed of settlement under which the deed of organization is made, duly certified by the proper custodian thereof or proved by affidavit to be a copy; also, a certificate under the hand and seal of the proper officer of such state or country having supervision of insurance business therein, that such corporation or company is organized under the laws of such state or country, with the amount of the capital stock or assets required by this chapter.

3. If not incorporated, a certificate setting forth the nature and character of the business, the loca-

tion of the principal office, the names of the persons and of those composing the association, the amount of actual capital employed or to be employed therein, and the names of all officers and persons by whom the business is or may be managed. The certificate must be verified by the affidavit of the chief officer, secretary, agent, or manager of the association; and if there are any written articles of agreement or association, a copy thereof must accompany such certificates; provided, however, when the number of persons composing such association shall exceed ten, such certificate need not state the names of any greater number of persons than ten, who shall be the largest shareholders; and if such association of persons be formed out of the United States, the said certificate need not contain the names of any officers or managers other than those resident within the United States, nor any statement of capital not employed within the United States, and the affidavit may be made by the chief executive officer or manager in the United States.

Annual and Other Reports to be Filed and Published.

Pol. C. Sec. 611. All corporations or persons doing the business of insurance in this state must make and file with the insurance commissioner, on or before the fifteenth day of January of each year, a statement, verified by the oath of the principal executive officer or manager residing in this state, showing the business done in this state during the year ending the thirty-first day of December then next preceding. They shall also make and file with said commissioner, at the times hereinafter mentioned, further statements which must exhibit the condition and affairs of every such corporation, person, firm, or association, on the thirty-first day of December then next preceding, which statements as adjusted by the commissioner upon a proper examination of the same, must be published by such corporation, per-

son, firm, or association, daily, for the period of one week, in some newspaper published in the city where the principal office in this state is located. Such statement, if made by a person or corporation organized under the laws of this state, must be filed with the commissioner on or before the first day of February of each year. If made by a person or persons residing in, or corporation organized under the laws of any other of the states or territories of the United States, it must be filed on or before the tenth day of March of each year. And if made by a person, or corporation organized under the laws of any country foreign to the United States, it must be filed on or before the first day of May of each year.

Foreign Insurance Companies—Right to do Business.

Civil Code 419, p. 500, *supra*.

Penalties for Failure to Comply With the Laws of This State.

Pen. C. Sec. 439. Every person who in this state procures, or agrees to procure, any insurance for a resident of this state, from any insurance company not incorporated under the laws of this state, unless such company or its agent has filed the bond required by the laws of this state, relating to insurance, is guilty of a misdemeanor.

Must Designate a Resident-Agent.

Pol. C. Sec. 616. The insurance commissioner must require, as a condition precedent to the transaction of insurance business in this state by any foreign corporation or company, that such corporation or company must file in his office the name of an agent and his place of residence in this state, on whom summons and other process may be served in all actions or other legal proceedings against such corporation or company. All process so served gives jurisdiction over the

person of such corporation or company. The agent so appointed and designated shall be deemed in law a general agent, and must be the principal agent or chief manager of the business of such corporation or company in this state. Any such foreign corporation or company shall, as a further condition precedent to the transaction of insurance business in this state, and in consideration of the privilege to transact such insurance business in this state, make and file with the insurance commissioner an agreement or stipulation, executed by the proper authorities of such corporation or company in form and substance as follows: The (giving name of corporation or company) does hereby stipulate and agree, that in consideration of the permission granted by the state of California to it to transact insurance business in this state, that if at any time said corporation or company shall be without an agent in said state, on whom summons, or other legal process may be served, service of such summons or other legal process may be made upon the insurance commissioner, such service upon the commissioner to have the same force and effect as if made upon the corporation or company. Whenever such service of summons or other legal process shall be made upon the insurance commissioner, he must, within ten days thereafter, transmit by mail, postage paid, a copy of such summons or other legal process to the company or corporation, addressed to the president or secretary thereof, at its home or principal office. Such copy must be certified by the commissioner, under his hand and official seal, and the sending of such copy by the said commissioner shall be a necessary part of the service of summons or other legal process.

Fines for Failure to File Reports.

Pol. C. Sec. 617. The commissioner must collect the sum of one hundred dollars from any company or corporation engaged in the business of

insurance in this state, for a failure to make and file in his office within the time prescribed by law, the statements and stipulations required by sections six hundred and ten, six hundred and eleven, six hundred and twelve, six hundred and thirteen, and six hundred and sixteen of this code, and an additional penalty of two hundred dollars for each and every month or fractional part of a month thereafter that such company or corporation continues to transact the business of insurance until such statements and stipulations are filed; and for that purpose suits may be instituted by the insurance commissioner, in the name of the people of the state of California, in any court of competent jurisdiction. And for all lawful expenses incurred under this section or any other section of this code, in the prosecution of any suit or proceeding for the enforcement of the insurance laws of this state, the insurance commissioner must present bills duly certified by him, with the vouchers to the state board of examiners, who must allow the same and direct payment thereof to be made; and the controller shall draw warrants therefor on the treasurer for the payment of the same to the insurance commissioner (in addition to the ordinary contingent expenses) out of the general fund.

Retaliatory Provisions.

Pol. C. Sec. 622. When by the laws of any other state or country, any taxes, fines, penalties, licenses, fees, deposits of money, or of securities, or other obligations, or prohibitions, are imposed on insurance companies of this state, doing business in such other state or country, or upon their agents therein, in excess of such taxes, fines, penalties, licenses, fees, deposits of securities or other obligations or prohibitions, imposed upon insurance companies of such other state or country, so long as such laws continue in force, the same obligations and prohibitions of whatsoever kind must be imposed upon insurance com-

panies of such other state or country doing business in this state. And whenever under this section any deposit of security shall be made in this state, such deposit shall be made in stocks or bonds of the United States government, or in those of the state of California, or in interest-bearing bonds of any of the counties or incorporated cities and towns of the state of California not in default for interest on such bonds, which said securities must be estimated at not exceeding their par value nor their market value.

Bond from Agents of Foreign Insurance Corporations.

Pol. C. Sec. 623. The commissioner must require every company, association, or individual, not incorporated under the laws of this state, and proposing to transact insurance business by agent or agents in this state, before commencing such business to file in his office a bond, to be signed by the person or firm, officer or agent, as principal, with two sureties, to be approved by the commissioner, in the penal sum of two thousand dollars for each insurance company, association, firm, or individual for whose account it is proposed to collect premiums of insurance in this state, the conditions of such bonus to be as follows:

1. That the person or firm, agent, or officer named therein, acting on behalf of the company, association, firm, or individual named therein, will pay to the treasurer of the county, or city and county, in which the principal office of the agency is located, such sum per quarter, quarterly in advance, for a license to transact an insurance business, or such other license as may be imposed by law, so long as the agency remains in the hands of the person or firm, officer, or agent named as principal in the bond.

2. That the person or firm, officer, or agent will pay to the state all stamp or other duties on the gross amounts insured by them, in the

manner and at the time prescribed by law, inclusive of renewals on existing policies.

3. That the person, firm, agent, or corporation named therein, will conform to all the provisions of the revenue and other laws made to govern them.

Pol. C. Sec. 624. Whenever the same person, firm, officer, or agent desires to collect premiums of insurance for more than one company, association, or individual, not incorporated under the laws of this state, the commissioner must require a separate bond, as provided in the preceding section, for each company or association so represented by such person, firm, officer, or agent.

Charter to be Filed.

Political Code 607, p. 510, *supra*.

Agent's Power of Attorney to be Filed.

Pol C. Sec. 608. He [insurance commissioner] must require from every insurance association not formed under the laws of this state, or not incorporated, carrying on the business of insurance by an agent:

1. A certified or verified power of attorney, or written authority to such agent;

2. A notice of any change of agents or in the powers of any agent, within ninety days after such change, and a certified copy of any new or further power of attorney or authority before the same is acted under;

3. When by any law, agreement, or other writing, any change is made in respect to any of the particulars set forth in the certificate on file, a certified copy of such law, agreement, or other writing, verified respectively as certificates are required to be verified; also, a notice of such change before the same is acted under.

FIRE AND MARINE INSURANCE COMPANIES.

Amount of Capital Stock Required.

Powers in General.

Single Risk—Amount Limited.

Powers of Underwriter's Fire Patrol.

Capital Stock to be Paid Up.

Certificate Required.

Dividends—From What Made.

Funds for Underwriters' Fire Patrol—How Raised.

Annual Valuation of Policies of Life Insurance.

Retaliatory Provision—Foreign Companies.

Amount of Capital Stock Required.

Civil Code 419, p. 500, *supra*.

Powers in General.

C. C. Sec. 426. Every corporation formed for fire or marine insurance, or both, may make insurance on all insurable interests within the scope of its articles of incorporation, and may cause itself to be reinsured.

Single Risk—Amount Limited.

C. C. Sec. 428. Fire and marine insurance corporations must never take, on any one risk, whether it is a marine insurance or an insurance against fire, a sum exceeding one-tenth part of their capital actually paid in, and intact at the time of taking such risk, without at once reinsuring the excess above one-tenth.

Powers of Underwriters' Fire Patrol.

C. C. Sec. 453a. Any corporation of underwriters heretofore organized and now existing, or which may be hereafter organized under the laws of this state, for the purpose of discovering and preventing fires and of saving property and human life from conflagration, and doing business within any municipal corporation of this state, has power, at its own proper cost and expense, to maintain a corps of men, with proper officers, equipped with the necessary machinery and ap-

paratus therefor, whose duty it is, so far as practicable, to discover and prevent fires and save property and human life from conflagration; and for the effective discharge of such duties, authority is hereby granted such corps to enter any building on fire, or in which property is on fire, or which such corps or any officer thereof deems to be immediately exposed to any existing fire, or in danger of taking fire from a burning building, and to remove or otherwise save and protect from conflagration or damage by water any property, during and immediately after such fire. Nothing in this chapter must be so construed as in any degree to lessen, impair, or interfere with the powers, privileges, duties, or authority of the regular fire department of such municipality; nor can any act of such corps justify any owner of any building or property in abandoning such building or property.

Sec. 453b. Such corporation, with its officers and corps, when running to a fire with its horses, vehicles, and salvage apparatus, has the same right of way as is or may be bestowed by any ordinance of the municipality or law of the state upon the regular fire department of the municipality wherein such corporation is acting; but the rights of such fire department must always be paramount to the rights of such corporation. All ordinances now existing or which may hereafter be passed by the municipal authorities of any city and county, or of any incorporated city or town wherein such a corporation may carry on business, and all laws of this state applicable to such city and county, or city or town, for the conviction or punishment of any person or persons willfully or carelessly obstructing the progress of the apparatus of the fire department of such city and county, or city or town, while going to a fire, or of any person or persons willfully or carelessly injuring any animal or property of said fire department, are equally applicable

to any person or persons wilfully or carelessly obstructing the progress of the apparatus of such corporation while going to a fire, and to any person or persons who wilfully or carelessly injures any animal or property of such corporation; and said laws and ordinances, and their penalties, may be enforced in the same courts and in the same manner, and with equal force and effect, as in the case of the fire department.

Capital Stock to be Paid Up.

C. C. Sec. 424. The entire capital stock of every fire or marine insurance corporation must be paid up in cash within twelve months from the filing of the articles of incorporation, and no policy of insurance must be issued or risk taken until twenty-five per cent of the whole capital stock is paid up.

Certificate Required.

C. C. Sec. 425. The president and a majority of the directors must, within thirty days after the payment of the twenty-five per cent of the capital stock, and also within thirty days after the payment of the last installment or assessment of the capital stock limited and fixed, prepare, subscribe, and swear to a certificate setting forth the amount of the fixed capital and the amount thereof paid up at the times respectively in this section named, and file the same in the office of the county clerk of the county where the principal place of business of the corporation is located, and a duplicate thereof, similarly executed, with the insurance commissioner.

Dividends—From What Made.

C. C. Sec. 430. No fire or marine insurance corporation, with a subscribed capital of less than two hundred thousand dollars, must declare any dividends, except from profits remaining on hand after reserving:

1. A sum necessary to form, with the sub-

scribed capital stock, the aggregate sum of two hundred thousand dollars;

2. All the premiums received or receivable on outstanding marine or inland risks, except marine time risks;

3. A fund equal to one-half the amount of all premiums on fire risks and marine time risks not terminated at the time of making such dividend;

4. A sum sufficient to pay all losses reported or in course of settlement, and all liabilities for expenses and taxes.

Funds for Underwriters' Fire Patrol—How Raised.

C. C. Sec. 453c. In the month of July, in every year, there must be held a meeting of all corporations created for the purposes specified in this chapter; of which ten days' previous notice must be inserted in at least one daily newspaper published in the municipality where said corporation is organized or established, at which meeting each insurance company, corporation, association, underwriter, agent, person, or persons doing a fire insurance business in said municipality, whether members of said corporation or not, shall have a right to be represented, and shall be entitled to one vote. A majority of the whole number so represented has power to decide upon the question of sustaining the fire patrol organized by corporations heretofore created, or that may be hereafter created, and fixing the maximum amount of expenses which may be incurred therefor during the fiscal year next to ensue, which amount must in no case exceed two per centum of the aggregate premiums returned as received, as provided in this section, and the whole of such amount, or so much thereof as may be necessary, may be assessed upon all insurance companies, corporations, associations, underwriters, agents, person, or persons who assume risks and accept premiums for fire insurance in said municipality, as hereinbefore mentioned, in proportion to the several amounts of premiums returned, as re-

ceived by each, as hereinafter provided, and such assessment is collectible by and in the name of said corporation, in any court of law in the state of California having jurisdiction, in such manner and at such time or times as said corporation may determine. In order to provide for the payment of persons employed by said corporation, and to maintain suitable rooms, and apparatus for saving life and property contemplated, said corporation is empowered to require a statement to be furnished, semi-annually, by all insurance companies, corporations, associations, underwriters, agents, or persons, of the aggregate amount of premiums received for insuring property in the municipality where said corporation is organized or established, for and during the six months next preceding the first day of July and the first day of January of each year, which statement must be sworn to by the president or secretary of the corporation or association, or by the agent or person so acting or effecting such insurance in said municipality, and must be handed to the secretary of said corporation heretofore created or hereafter to be created under the provisions of this chapter within ten days after the first day of July and the first day of January of each year. Said secretary must, within the ten days aforesaid, by written or printed demand signed by him, require from every insurance company, corporation, association, underwriter, agent, or person engaged in the business of fire insurance in the municipality where said corporation is organized or established, the statement hereinbefore provided for. Such demand may be delivered personally at the office of such insurance company, corporation, association, underwriter, agent, or person within said municipality, and every officer of such insurance company, corporation, association, and every such underwriter, agent, or person, who, for fifteen days after said demand, neglects to render the

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statement herein provided for, forfeits fifty dollars for the use of said corporation, and also forfeits for its use twenty-five dollars in addition for every day he so neglects after the expiration of the said fifteen days, and such additional penalty may be computed and collected up to the time of the trial of any action brought for the recovery thereof. The penalty herein provided for may be sued for and collected, with costs, in any court of law within the state of California having jurisdiction, by and in the name of said corporation.

Annual Valuation of Policies of Life Insurance.

C. C. Sec. 447. Every life insurance corporation organized under the laws of this state must, on or before the first day of February of each year, furnish the insurance commissioner the necessary data for determining the valuation of all its policies outstanding on the thirty-first day of December then next preceding. And every life insurance company organized under the laws of any other state or country, and doing business in this state, must, upon the written requisition of the commissioner, whenever the latter is authorized to make a valuation of policies, as provided in section 449, furnish him, at such time as he may designate, but not oftener than once in each year, the requisite data for determining the valuation of all of its policies then outstanding. Such valuations must be based upon the rate of mortality established by the American experience life-table and interest at four and one-half per cent per annum; provided, that from and after the thirty-first day of December, A. D. one thousand eight hundred and ninety-one, such valuations must be based upon the rate of mortality established by the combined experience or actuaries' tables of mortality, with interest at the rate of four per cent per annum. When the laws of any other state or territory require of a life insurance company organized under the laws of this state a valu-

ation of its outstanding policies by any standard of valuation different from that named in this section, the insurance commissioner is hereby authorized to make such valuation for use in such other state or territory, and to issue his certificate in accordance therewith. For the purpose of making the valuations, the insurance commissioner is authorized to employ a competent actuary, whose compensation for such valuations shall be one cent for each thousand dollars of insurance, to be paid by the respective companies whose policies are thus valued.

Retaliatory Provision—Foreign Companies.

C. C. Sec. 449. When the certificate of the insurance commissioner of this state, of the valuation of the policies of a life insurance company, as provided in section four hundred and forty-seven, issued to any company organized under the laws of this state, shall not be accepted by the insurance authorities of any other state, in lieu of a valuation of the same, by the insurance officer of such other state, then every company organized under the laws of such other state doing business in this state shall be required to have a separate valuation of its policies made under the authority of the insurance commissioner of this state, such valuation to be made and the costs thereof to be the same as provided in section four hundred and forty-seven.

MUTUAL INSURANCE COMPANIES.

An Act Relating to Companies Formed Before 1873.

Amount of Capital Stock Required.

Mutual Benefit and Life Associations—How Created.

Mutual Benefit and Life Associations—Assessments.

Policy—What to Contain.

Dividends—From What Made.

An Act Relating to Companies Formed Before 1873.

Stats. 1880, p. 229.

Amount of Capital Stock Required.

Civil Code 419, p. 500, supra.

Mutual Benefit and Life Associations—How Created.

C. C. Sec. 452a. Associations of not exceeding one thousand persons may be formed for the purpose of paying to the nominee of any member a sum, upon the death of the member, not exceeding three dollars for each member of the association. Such association may be formed by filing a certificate in the office of the clerk of the county in which the principal place of business is situated and a like certificate in the office of the secretary of state, each of which must state the general object of the association, its principal place of business, and the names of the officers selected to hold office for the first three months, and must be signed by such officers and verified by at least three of their number.

Mutual Benefit and Life Associations—Assessments.

C. C. Sec. 453. Each association provided for in this chapter may, on the death of a member, levy an assessment on the surviving members of not exceeding three dollars for each member, and pay the same to the nominee of such decedent, and may also provide for the payment of such annual payments by members as may be deemed just, but no member must be subject to any annual assessment in excess of that established when he joined the association. The association may make such by-laws not inconsistent with the laws of the state as may be necessary for its government and the transaction of its business; may, by its name, sue and be sued; loan such funds as it may have on hand; and own sufficient real estate for its busi-

ness purposes and such as it may be necessary to purchase on foreclosure of its mortgages.

Policy—What to Contain.

C. C. Sec. 450. Every contract or policy of insurance, except for tontine, term, or paid-up insurance, hereafter made by any person, company, or corporation organized under the laws of this state, or under those of any other state or country, with and upon the life of a resident of this state, and delivered within this state, must contain, unless the policy contains a stipulation for term or paid-up insurance different from that hereinafter specified, a stipulation that when, after three full annual premiums have been paid on such policy, it ceases or becomes void solely by the nonpayment of any premium when due, its entire net reserve, by the American experience table of mortality, and interest at four and one half per cent yearly, less any indebtedness to the company on such policy, must be applied by such company as a single premium, at such company's published rates in force at the date of the original policy, but at the age of the insured at time of lapse, either to the purchase of non-participating term insurance for the full amount insured by such policy, or upon the written application by the owner of such policy and the surrender thereof to such company within three months from such nonpayment of premium, to the purchase of a non-participating paid-up policy, payable at the time the original policy would be payable if continued in force, both kinds of insurance to be subject to the same conditions, except as to payment of premiums, as those of the original policy. It may be provided, however, in such stipulation, that no part of such term insurance shall be due or payable, unless satisfactory proofs of death are furnished to the insuring company within one year after death, and that if death occurs within three years after such nonpayment of premium,

and during such term of insurance, there shall be deducted from the amount payable the sum of all the premiums that would have become due on the original policy if it had continued in force. If the reserve on endowment policies is more than enough to purchase temporary insurance, as aforesaid, to the end of the endowment term, the excess must be applied to the purchase of pure endowment insurance, payable at the end of the term, if the insured is then living. If any life insurance corporation or company delivers to any person in this state a policy of insurance upon the life of any person residing in this state, not in conformity with the provisions of this section, the right of such corporation or company to transact business in this state thereupon and thereby ceases and terminates, and the insurance commissioner must immediately revoke the certificate of such corporation or company authorizing it to do business in this state, and publish such revocation daily, for the period of two weeks, in two daily newspapers, one published in the city and county of San Francisco, and the other in the city of Sacramento.

Dividends—From What Made.

C. C. Sec. 452. No corporation formed under the laws of this state, and transacting life insurance business, must make any dividends, except from profits remaining on hand after retaining unimpaired:

1. The entire capital stock;
2. A sum sufficient to pay all losses reported or in course of settlement, and all liabilities for expenses and taxes;
3. A sum sufficient to reinsure all outstanding policies, as ascertained and determined upon the basis of the American experience table of mortality, and interest at the rate of four and one half per cent per annum.

**CORPORATIONS FOR MUTUAL INSURANCE
ON THE ASSESSMENT PLAN.**

Capital and Members Required.

Reorganization Under the Code.

Phrase "Mutual Insurance on the Assessment Plan" Defined.

The Contract of Insurance—What Provisions to Contain.

Reserve Fund to Be Accumulated.

Who Can Be Insured—Form and Conditions of Application.

Member's Interest Not Subject to Attachment.

Effect of Non-Payment of Assessments.

Annual Statement to Insurance Commissioner.

Fees.

Foreign Companies.

Capital and Members Required.

C. C. Sec. 453e. Corporations may be formed to carry on the business of mutual insurance upon the assessment plan, and are subject only to the provisions of this chapter. No such corporation must issue contracts of insurance until at least two hundred persons have applied, in writing, for membership or insurance therein, and have paid to the treasurer of such corporation the sum of five thousand dollars. This sum must be invested in bonds or securities, approved by the insurance commissioner of this state, or deposited in some bank in this state where it will earn interest. Said bonds or securities, or evidences of such deposit, must be placed, through the insurance commissioner of this state, with the state treasurer, and the principal sum must be held in trust for the contract holders of such corporation, with the right in the corporation to exchange said bonds, securities, or evidence of bank deposit for others of like value. Such corporation must also, as a condi-

tion precedent to issuing any contracts of insurance, obtain the written certificate of the insurance commissioner that it has complied with the requirements of this chapter; and that the name of the corporation is not the same as that of any other corporation of this or other states, as indicated by the insurance department reports in his office; nor must the commissioner approve any name or title so closely resembling another as to mislead the public. No corporation formed hereunder has legal existence after one year from the date of its articles, unless its organization has been completed and business commenced; nor must any corporation or individual solicit, or cause to be solicited, any business, until such corporation has complied with the provisions of section six hundred and thirty-three of the Political Code.

Reorganization Under the Code.

C. C. Sec. 453f. Any existing corporation engaged in the business of life, health, accident, or endowment insurance on the assessment plan may reincorporate under the provisions of this code and chapter, but is not obliged to do so, and may, without such reincorporation, exercise the rights, powers, and privileges conferred by this chapter.

Phrase "Mutual Insurance on the Assessment Plan" Defined.

C. C. Sec. 453d. Every contract whereby a benefit may accrue to a party or parties therein named upon the death or physical disability of a person insured thereunder, or for the payment of any sums of money dependent in any degree upon the collection of assessments or dues from persons holding similar contracts, is deemed a contract of mutual insurance upon the assessment plan. Such contracts must show that the liabilities of the insured thereunder are not limited to fixed premiums.

The Contract of Insurance—What Provisions to Contain.

C. C. Sec. 453g. Every contract of insurance issued by such corporations must specify the sum or sums to be paid upon the happening of the contingency insured against, and when such payments must be made. Unless the contract is invalidated by fraud or by breach of its conditions, the corporation is obligated to pay the beneficiary the amount or amounts specified in its contract at the time or times therein named, and such indebtedness is a lien upon all the property of such corporation, with priority over all indebtedness thereafter incurred, except as hereinafter provided in case of insolvency. Failure to make such payment, within thirty days after notice, at the home office, by mail, as provided by law, of a final judgment, unless waiver is made by the beneficiary, constitutes a forfeiture of the right to do business.

Reserve Fund to Be Accumulated.

C. C. Sec. 453h. Every domestic corporation, organized to do or doing the business of insurance on the assessment plan, must accumulate a reserve or emergency fund, which must, at all times, be not less than the largest benefit contracted to be paid by it to any one person. Every corporation organized under the provisions of this chapter must accumulate such fund within a year from the date of its certificate of incorporation. Such fund, to the extent of the largest amount contracted to be paid by any such corporation to any one person, must be invested and deposited, as provided in section four hundred and fifty-three e, with the right in the corporation to exchange any such securities for others of equal value. The deposit required by section four hundred and fifty-three e constitutes a part of the reserve required by this section, at the option of such corporation. When any such corporation discontinues business, this fund must

be returned to such corporation, or disposed of as may be determined by the superior court of the county in which is its principal place of business.

Who Can Be Insured—Form and Conditions of Application.

C. C. Sec. 453j. No corporation doing business under this chapter, except accident or casualty corporations, must issue a contract of insurance upon the life of any person under fifteen nor over sixty-one years of age. Every such contract of insurance must be founded upon written application therefor, and, except where the application is for health, accident, or casualty insurance only, or for one hundred dollars life insurance or less, such application must be accompanied by the report of a reputable physician, containing a detailed statement of his examination of the applicant, showing the applicant to be in good health, and recommending the issuance of a contract of insurance. Any solicitor, agent, employee, examining physician, or other person making a false or fraudulent statement to any corporation doing business under this chapter, with reference to any application for insurance, or for the purpose of obtaining any money or benefit from such corporation, is guilty of a misdemeanor; and any person who makes a false statement of any material fact or thing in a sworn statement as to the death or disability of a contract-holder, in any such corporation, for the purpose of procuring or aiding the beneficiary or beneficiaries or contract-holder in procuring the payment of a benefit named in the contract, is guilty of perjury.

Member's Interest Not Subject to Attachment.

C. C. Sec. 453k. The money, benefit, annuity, endowment charity, relief, or aid to be paid as provided by the contracts issued by any corporation doing business under this chapter, is not

liable to attachment or other process, nor to be seized, taken, appropriated, or applied by any legal or equitable process, nor by operation of law, to pay any debts or liability of the contract-holder or any beneficiary named thereunder.

Effect of Nonpayment of Assessments.

C. C. Sec. 453m. No policy or certificate issued by any corporation or association doing business under the provisions of this chapter lapses for the nonpayment of any assessments, dues, or premiums, unless the corporation or association has first mailed to the insured under such policy or certificate, at his or her last given postoffice address, a notice setting forth the amount to be paid, and the time the same is due and payable; and such notice must be mailed at least fifteen days before the assessment is due; provided, that such corporations doing business under this chapter as collect specific amounts at specific dates, as contained in the contract, are not compelled to send such notices; and an affidavit made by the officer, bookkeeper, or clerk of any such corporation having charge of the mailing of notices, setting forth the facts as they appear on the records in the office of the said corporation, showing that such notice was mailed and the date of mailing, is conclusive evidence of the mailing of such notice.

Annual Statement to Insurance Commissioner.

C. C. Sec. 453-l. Every corporation, whether domestic or foreign, doing the business of effecting insurance on the assessment plan must, annually, on or before the first day of February, file with the insurance commissioner, in such form as he may prescribe, a statement of its affairs for the year ending on the preceding thirty-first day of December. The insurance commissioner, in person or by duly authorized deputy, has the power of examination into the affairs of any domestic corporation doing business or

claiming to do business under this chapter, at any time, in his discretion, and must make such examination at least once a year. If he, after an examination of the affairs of a corporation, finds that it is not doing its business in conformity to this chapter, or that it is doing a fraudulent or unlawful business, or that it is not carrying out its terms of contract, or that it cannot, within three months from the date of notice of default, pay its obligations, he must cite the president, secretary, manager, or general agent of the corporation, or all of them, to appear before him, stating the time and place, to show cause why the authority of the corporation to do business should not be revoked, and if cause is not shown, then he must report the facts to the attorney-general of the state, who must commence proceedings in the proper court to restrain the corporation from doing any further business.

Fees.

C. C. Sec. 453n. The fees for filing statements, certificates, or other documents required by this chapter, or for any service or act of the insurance commissioner, and the penalties for any violation of this chapter, must, except as otherwise provided herein, be the same as provided in the laws of this state relating to life insurance companies, and must be disposed of as provided by such laws.

Foreign Companies.

C. C. Sec. 453i. Corporations organized under the laws of any other state or country to transact the business of mutual assessment insurance must, as a condition precedent to transacting business in this state, comply with the provisions of section four hundred and five, and deposit with the insurance commissioner of this state a certified copy of its charter or other instrument required by its home authorities; a statement under oath, of its president or secretary, of its

business for the preceding year, in such form as may be required by the insurance commissioner of this state; an appointment of a general agent, service upon whom binds the corporation; a certificate that for the next preceding twelve months it has paid in full the maximum amount named in its contract of insurance; a certificate from the proper office of its state or government that like corporations of this state are legally entitled to do business in such state or country; copies of its contracts of insurance and applications, which must show that the liabilities of its members are not limited to fixed premiums; and evidence, satisfactory to the insurance commissioner, that the corporation has accumulated a fund equal to that required of like corporations in this state, constituting a reserve or surplus fund, held in trust for the benefit of its contract-holders, and so invested and held as required by the laws of the state or government under which such corporation was organized. The insurance commissioner must thereupon issue a license to such corporation to do business in this state. This license must be renewed annually, and may be revoked whenever it is ascertained that the statements required to be made by this section are not true. Upon such revocation, notice thereof must be given by the insurance commissioner by publication in some newspaper published in the city and county of San Francisco, for two weeks, daily, and no new contracts must be made by such company in this state. When any other state or country imposes any additional license, fees, taxes, or penalties upon any corporation organized or doing business under this chapter, like license, fees, taxes, or penalties are imposed upon corporations of the same kind and their agents of such state or country doing business in this state.

MUTUAL HEALTH, LIFE AND ACCIDENT INSURANCE CORPORATIONS.

To Have a Capital Stock—Amount.

Premiums—In What Payable.

Fidelity and Casualty Companies—Amount of Capital Stock.

Guarantee Fund—What to Consist of.

Guarantee Fund—A Security for Creditors.

Declaration of Amount of Fixed Capital to be Filed.

Guarantee Fund—Not to be Divided or Withdrawn.

By-Laws—What May Contain.

Election of Directors—Who Can Vote at.

Directors—Number

To Have a Capital Stock

C. C. Sec. 437. Every

the purpose of mutual insurance for the health of persons, or against accidents to health of persons, or for life or any fixed period of time, or to purchase and sell annuities, must have a capital stock of not less than one hundred thousand dollars. It must not make any insurance upon any risk or transact any other business as a corporation until its capital stock is fully paid up in cash, nor until it has also obtained a fund, to be known as a "guarantee fund," of not less than two hundred and fifty thousand dollars, as is hereinafter provided; or, if it has no capital, until it has an ascertained surplus above all liabilities of at least three hundred and fifty thousand dollars. If more than the requisite amount is subscribed, the stock must be distributed pro rata among the subscribers. Any subscription may be rejected by the board of directors or the committee thereof, either as to the whole or any part thereof, and must be, so far as rejected, without effect.

*C. C. 437, Corporations in California, p. 534.
Strike out last clause of the second sentence beginning "or if it has no capital."*

Premiums—In What Payable.

C. C. Sec. 446. All premiums must be payable

wholly in cash, or one-half or a greater proportion in cash, and the remainder in promissory notes bearing interest, as may be provided for by the by-laws. Agreements and policies of insurance made by the corporation may be upon the basis of full or partial participation in the profits, or without any participation therein, as may be provided by the by-laws and agreed between the parties.

Fidelity and Casualty Companies—Amount of Capital Stock.

C. C. Sec. 420. Every company, corporation, or association hereafter formed or organized under the laws of this state for the transaction of business in any kind of insurance not enumerated in section four hundred and nineteen of the Civil Code, shall have a subscribed capital stock equal to one hundred thousand dollars, which shall be paid in at the times and in the manner prescribed for the payment of the capital stock of a corporation organized under section four hundred and nineteen of said Civil Code. No company, corporation, or association, formed or organized under the laws of any other state or country as a stock company, must transact any such insurance business in this state without a paid-up capital stock of not less than one hundred thousand dollars, in available cash assets, over and above all liabilities for losses reported, expenses, taxes, and reinsurance of all outstanding risks, as provided in section six hundred and two of the Political Code of this state. Nor must any company, corporation, or association, formed or organized under the laws of any other state or country as a mutual insurance company, transact any such insurance business in this state, unless such company, corporation, or association possesses available cash assets equal to at least one hundred thousand dollars over and above all liabilities for losses reported, expenses, taxes, and reinsurance of all outstanding risks, as pro-

vided in said section six hundred and two of the Political Code of this state.

Guarantee Fund—What to Consist of.

C. C. Sec. 438. The guarantee fund mentioned in the preceding section must consist of the promissory notes of solvent parties, approved by the board of directors and by each other, payable to the corporation or its order, and at such times, in such modes, and in such sums, with or without interest, and conformable in all other respects to such requirements, as the board of directors prescribe; but the amount of the notes given by any one person must not exceed in the whole the sum of five thousand dollars, exclusive of interest. Such notes must be payable absolutely and at the option of the corporation; they must be negotiable, and may be indorsed and transferred, or converted into cash, or otherwise dealt with by the corporation, at its discretion, without reference to any contingency of losses or expenses. Such notes, or the proceeds thereof, must remain with the corporation as a fund for the better security of persons dealing with it, and constitute the assets of the corporation, liable for all its debts, obligations, and indebtedness next after its assets from premiums and other sources, exclusive of capital stock, until the net earnings, over and above its expenses, losses, and liabilities, shall have accumulated in cash, or securities in which the net earnings have been invested, to a sum which, with the capital stock, is equal to the aggregate of the original amounts of the guarantee fund and of the capital stock.

Guarantee Fund—A Security for Creditors.

C. C. Sec. 439. The sum accumulated as provided in the preceding section, together with the capital stock, shall become and remain the fixed capital of the corporation, not subject to division among the stockholders or parties dealing with it,

or to be expended in any manner otherwise than may be required in payment of the corporation's debts and actual expenses, until the business of the corporation is closed, its debts paid, and its outstanding policies and obligations of every kind canceled or provided for; and if from any cause a deficiency at any time occurs in such fixed capital, no further division of profits must take place until such deficiency has been made up.

Declaration of Amount of Fixed Capital to be Filed.

C. C. Sec. 440. Whenever the fixed capital of the corporation is obtained as hereinbefore provided, the president of the corporation and its actuary, or its secretary if there is no actuary, must make a declaration in writing, sworn to before some notary public, of the amount of such fixed capital, and of the particular kinds of property composing the same, with the nature and amount of each kind, which must be filed with the original articles of incorporation, and a copy, certified by the county clerk, must be published for at least four successive weeks, in a newspaper published in the county where the principal business of the corporation is situated. Upon the filing of such declaration the guarantee fund is discharged of its obligations, and all notes of the fund remaining in the control of the corporation, and not affected by any lien thereon, or claim of that nature, must be surrendered by it to the makers thereof, respectively, or other parties entitled to receive the same.

Guarantee Fund—Not to be Divided or Withdrawn.

C. C. Sec. 441. Until the guarantee fund is discharged from its obligations, as provided in the preceding section, no note must be withdrawn from the fund unless another note of equal solvency is substituted therefor, with the approval of the board of directors. The corporation must allow a commission, not exceeding five per cent per annum, on all such guarantee notes whil

outstanding, and also interest on all moneys paid on such notes by the parties liable thereon, at the rate of twelve per cent per annum, payable half yearly until repaid by the corporation, unless the current rate of interest is different from this amount, in which case the rate payable, may, from time to time, at intervals of not less than one year, be increased or reduced by the board of directors, so as to conform to the current rate.

By-Laws—What May Contain.

C. C. Sec. 445. The corporation may, by its by-laws, limit the number of shares which may be held by any one person, and make such other provisions for the protection of the stockholders and the better security of those dealing with it as to a majority of the stockholders may seem proper, not inconsistent with the provisions of this title or part. [C. C. 414-453p.]

Election of Directors—Who Can Vote at.

C. C. Sec. 442. After the filing of the declaration of the fixed capital, as in this article provided, the holders of policies of life insurance for the term of life, on which the premiums are not in default, may vote at the election of directors, and have one vote for each one thousand dollars insured by their policies, respectively.

Directors—Number of.

C. C. Sec. 443. The number of directors specified in the articles of incorporation may be altered from time to time during the existence of the corporation by resolution, at the annual meeting of a majority of those entitled to vote at the election of directors, but the number must never be reduced below five.

LAND TITLE INSURANCE CORPORATIONS.

Funds—In What May be Invested.

Surplus Fund to be Accumulated.

Dividends—From What Made.

Funds—In What May be Invested.

Civil Code 421, p. 505, supra.

Surplus Fund to be Accumulated.

C. C. Sec. 422. Corporations transacting business in insuring titles to real estate must annually set apart a sum equal to twenty-five per cent of their premiums collected during the year, which sum must be allowed to accumulate until a fund has been created amounting to ten per cent of the subscribed capital stock. Such fund must be maintained as a further security to policy-holders, and be known as the surplus fund, and if at any time such fund is impaired by reason of a loss, the amount by which it may be impaired must be restored in the manner hereinabove provided for its accumulation. The reporting of a loss must be deemed an impairment of such fund for the purposes of this section. Such corporation must not make any dividends except from profits remaining on hand after retaining unimpaired:

1. The entire subscribed capital stock;
2. The amount owing to the surplus fund, under the provisions of this section;
3. A sum sufficient to pay all losses reported, or in course of settlement, which must be in excess of the surplus fund, and all liabilities for expenses and taxes.

Dividends—From What Made.

Civil Code 429, p. 509, supra.

COUNTY FIRE INSURANCE COMPANIES.

An Act to Provide for Their Creation and Organization.

Act of April 1, 1897; Stats. 1897 p. 439.

Mining Corporations.

Power and Method of Consolidation.

Stockholders Entitled to Visit Mine, with Expert.

Liabilities of Officers to Stockholders.

May Maintain Agencies in Other States.

Stock Certificates Issued at Transfer Agencies
—How Signed.

Alienation of Property—Method.

Stock Must be in Name of Real Owner or Trustee.

Liability of Officers for Misfeasance in Office.

Books to be Kept Open—Reports to be Published.

Power and Method of Consolidation.

C. C. Sec. 587a. It is lawful for two or more corporations formed, or that may hereafter be formed, under the laws of this state, for mining purposes, which own or possess mining claims or lands adjoining each other, or lying in the same vicinity, to consolidate their capital stock, debts, property, assets, and franchises, in such manner and upon such terms as may be agreed upon by the respective boards of directors or trustees of such corporations so desiring to consolidate their interests; but no such consolidation must take place without the written consent of the stockholders representing two-thirds of the capital stock of each corporation, and no such consolidation can, in any way, relieve such corporations, or the stockholders thereof, from any and all just liabilities; and in case of such consolidation, due notice of the same must be given, by advertising, for one month, in at least one newspaper in the county where the said mining property is situated, if there is one published therein, and also

in one newspaper published in the county where the principal place of business of any of said corporations is. And when the consolidation is completed, a certificate thereof, containing the manner and terms of such consolidation, must be filed in the office of the county clerk of the county in which the original certificate of incorporation of each of said corporations is filed, and a copy thereof must be filed in the office of the secretary of state; such certificate must be signed by a majority of each board of trustees or directors of the original corporations, and it is their duty to call, within thirty days after the filing of such certificate, a meeting of the stockholders of all of said corporations so consolidated, to elect a board of trustees or directors for the consolidated corporation, for the year thence next ensuing; and to cause notice of the time and place fixed for such meeting to be mailed to each stockholder of each of such corporations at his last known place of residence or business at least ten days before the time fixed for such meeting. The said certificate must also contain all the requirements prescribed by section two hundred and ninety.

Stockholder Entitled to Visit Mine, with Expert.

C. C. Sec. 589. Any stock holder of a corporation formed under the laws of this state for the purpose of mining, is entitled to visit, accompanied by his expert, and examine the mine or mines owned by such corporation, and every part thereof, at any time he may see fit; and when such stockholder applies to the president of such corporation, he must immediately cause the secretary thereof to issue and deliver to such applicant an order, under the seal of the corporation, directed to the superintendent, commanding him to show and exhibit such parts of said mine or mines as the party named in said order may desire to visit and examine. It is the duty of the superintendent, on receiving such order, to furnish such stockholder every facility for making a full

and complete inspection of said mine or mines, and of the workings therein, and to accompany said stockholder either in person, or to furnish some person familiar with said mine or mines to accompany him in his visit to and through such mine or mines, and every part thereof. If the superintendent fails to obey such order, such stockholder is entitled to recover, in any court of competent jurisdiction, against the corporation, the sum of one thousand dollars, and traveling expenses to and from the mine, as liquidated damages, together with costs of suit. In case of such refusal, it is the duty of the directors of the corporation forthwith to remove the officer so refusing, and thereafter he must not be employed directly or indirectly by the corporation, nor must any salary be paid to him.

Liabilities of Officers to Stockholders.

C. C. Sec. 590. In case of the refusal or neglect of the president to cause to be issued by the secretary the order mentioned in section five hundred and eighty-nine, such stockholder is entitled to recover against said president the sum of one thousand dollars and costs, as provided in the last section. If the directors fail to have the reports and accounts current made and posted as provided in section five hundred and eighty-eight, they are liable, either severally or jointly, to an action by any stockholder complaining thereof, and on proof of such refusal or failure, he may recover judgment for actual damages sustained by him, with costs of suit. Each of such defaulting directors is also liable to removal for such neglect.

May Maintain Agencies in Other States.

C. C. Sec. 586. Any corporation organized in this state for the purpose of mining, or carrying on mining operations in or without this state, may establish and maintain agencies in other states of the United States, for the transfer and issuing

of their stock; and a transfer or issue of the same at any such transfer agency, in accordance with the provisions of its by-laws, is valid and binding as fully and effectually for all purposes as if made upon the books of such corporation at its principal office within this state. The agencies must be governed by the by-laws and the directors of the corporation.

**Stock Certificates Issued at Transfer Agencies—
How Signed.**

C. C. Sec. 587. All stock of any such corporation, issued at a transfer agency, must be signed by the president and secretary of the corporation, and countersigned at the time of its issue by the agent having charge of the transfer agency. No stock must be issued at a transfer agency unless the certificate of stock, in lieu of which the same is issued, is at the time surrendered for cancellation.

Alienation of Property—Method.

C. C. Sec. 584. The directors of a mining corporation must not sell, lease, mortgage, nor otherwise dispose of any mining ground owned or held by the corporation, nor purchase any additional mining ground, unless their act is ratified by the holders of at least two-thirds of the capital stock of the corporation made either in writing, signed and acknowledged by such stockholders, or by a resolution duly passed at a regularly called stockholders' meeting. The certificate of the secretary of any mining corporation reciting such ratification at a stockholders' meeting, or the names of the stockholders, with the amount of stock held by each and the total stock outstanding, signed and acknowledged by him in the manner provided for the acknowledgment of conveyances of real property, may be attached to, or indorsed upon, any deed, mortgage, conveyance, or other instrument made under this section and recorded with such deed, conveyance, or other instrument, and

the recitals contained in such certificate, or the duly recorded copy thereof, are prima facie evidence of their truthfulness for all purposes whatsoever. No one except a stockholder in such a corporation must be permitted to urge any objection to the acquisition by it of any additional ground or other property.

Stock Must be in Name of Real Owner or Trustee.

C. C. Sec. 585. All the stock of a mining corporation must stand on the books thereof in the names of the real owners or the names of their trustees. In every case in which stock stands in the name of a trustee, the party for whom he holds it must be designated upon such books and also in the body of the certificate of such stock. Neither the corporation nor its secretary must close its books more than two days prior to the day of an election.

Liabilities of Officers for Misfeasance in Office.

Civil Code 590, p. 542, supra.

Books to be Kept Open—Reports to be Published.

C. C. Sec. 588. It is the duty of the secretary of every corporation formed for the purpose of mining, or conducting mining in California, to keep a complete set of books showing all receipts and expenditures of such corporation, the sources of such receipts, and the objects of such expenditures, and also all transfers of stock. All books and papers must, at all times during business hours, be open to the inspection of any stockholder. He is entitled to be accompanied by an expert, and to make copies or extracts from any such books or papers. He may, at reasonable hours, examine such mining property, accompanied by an expert, take samples, and make such other examination as he may deem necessary. It is the duty of the directors, on the second Monday of each and every month, to cause to be made an itemized account or balance sheet for the previous month, embracing a full and complete state-

ment of all disbursements and receipts, showing from what sources such receipts were derived, and to whom and for what object or purpose such disbursements or payments were made; also all indebtedness or liabilities incurred or existing at the time, and for what the same were incurred, and the balance of money, if any, on hand. Such account or balance sheet must be verified under oath by the president and secretary, and posted in some conspicuous place in the office of the company. It is the duty of the superintendent, on the first Monday of each month, to file with the secretary an itemized account, verified under oath, showing all receipts and disbursements made by him for the previous month, and for what said disbursements were made. Such account must also contain a verified statement showing the number of men employed under him, and for what purpose, and the rate of wages paid to each. He must attach to such accounts a full and complete report, under oath, of the work done in said mine, the amount of ore extracted, from what part of mine taken, the amount sent to mill for reduction, its assay value, the amount of bullion received, the amount of bullion shipped to the office of the company or elsewhere, and the amount, if any, retained by the superintendent. It is his duty to forward to the office of the company a full report, under oath, of all discoveries of ores or mineral-bearing quartz made in said mine, whether by boring, drifting, sinking, or otherwise, together with the assay value thereof. All accounts, reports, and correspondence from the superintendent must be kept in some conspicuous place in the office of said company, open to the inspection of all stockholders.

Mutual Benefit Lodges.

What Law Governs.

Sec. 453p. The provisions of this chapter do not apply to secret or fraternal societies, lodges, or councils, which conduct their business and secure membership on the lodge system exclusively, having ritualistic work and ceremonies in their societies, lodges; or councils, nor to any mutual or benefit association organized or formed and composed of members of any such society, lodge, or council exclusively.

Railroad Corporations.

Are Common Carriers—Legislative Control.
Articles of Incorporation—What to Contain.
Subscribed Capital Stock—Amount of.
Amounts to be Paid in Before Incorporation.
Power to Consolidate.
Traffic Agreement and Leases.
Powers.
No Passes to Public Officials.
Pooling Traffic—Earnings Unlawful.
Power to Create Bonded Debt.
Sinking Fund Required.
Franchises for Elevated or Underground Roads.
Motive Power—What May be Used.
Map and Profile to be Filed.
Power to Change Line of Road.
Time of Commencement and Completion of Road.
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Crossings.
Right of Way Over State Lands.
Power to Alienate Franchises and Property.
No Discrimination in Rates.
Baggage to be Checked.
Time-Tables to be Published.
Damages for Refusal to Furnish Transportation.
Seats in Cars.
Rules and Regulations to be Posted in Cars.
Fences to be Maintained—Penalty.
Bell on Locomotive.
Right to Eject Passengers—When and Where.
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Rails—What Kinds May be Used.

Power of Railroad Commission to Fix Rates.

Capital Stock to be Fixed.

Assessment of Stock.

Liability of Officers for Exceeding the Debt Limit.

Effect of Exceeding the Debt Limit.

Election and Removal of Directors.

Penal Liabilities of Officers and Agents.

Annual Report—What to Contain.

Foreign Railroad Corporations.

Are Common Carriers—Legislative Control.

Constitution, Art. XII, Sec. 17, p. 469, supra.

Articles of Incorporation—What to Contain.

C. C. Sec. 291. The articles of incorporation of any railroad, wagon road, or telegraph organization must also state:

1. The kind of road or telegraph intended to be constructed;

2. The place from and to which it is intended to be run, and all the intermediate branches;

3. The estimated length of the road or telegraph line;

4. That at least ten per cent. of the capital stock subscribed has been paid in to the treasurer of the intended corporation.

Subscribed Capital Stock—Amount of.

C. C. Sec. 293. Each intended corporation named in section 291, before filing articles of incorporation, must have actually subscribed to its capital stock, for each mile of the contemplated work, the following amounts, to wit:

1. One thousand dollars per mile of railroads;

2. One hundred dollars per mile of telegraph lines;

3. Three hundred dollars per mile of wagon roads.

Amounts to be Paid in Before Incorporation.

C. C. Sec. 294. Before the articles of incorporation of any corporation referred to in the pre-

ceding section are filed, there must be paid for the benefit of the corporation, to a treasurer elected by the subscribers, ten per cent. of the amount subscribed.

C. C. Sec. 295. Before the secretary of state issues to any such corporation a certificate of the filing of articles of incorporation, there must be filed in his office an affidavit of the president, secretary, or treasurer named in the articles, that the required amount of the capital stock thereof has been actually subscribed, and ten per cent. thereof actually paid to a treasurer for the benefit of the corporation.

Power to Consolidate.

C. C. Sec. 473. Any railroad corporation incorporated under the laws of this state may consolidate with one or more railroad corporations incorporated under the laws of this state, or under the laws of any other state or territory of the United States, its capital stock, properties, roads, equipments, adjuncts, franchises, claims, demands, contracts, agreements, obligations, debts, liabilities and assets of every kind and description, upon such terms and in such manner as may be agreed upon by their respective boards or directors; provided, no such consolidation shall take effect until the same shall have been ratified and confirmed in writing by stockholders of the respective corporations representing three-fourths of the subscribed capital stock of their respective corporations. In case of such consolidation "articles of incorporation and consolidation" must be prepared, setting forth: First, the name of the new corporation; second, the purpose for which it is formed; third, the place where its principal business is to be transacted; fourth, the term for which it is to exist, which shall not exceed fifty years; fifth, the number of its directors (which shall not be less than five, nor more than thirteen) and the names and residences of the persons appointed to act as

such until their successors are elected and qualified; sixth, the amount of its capital stock (which shall not exceed the amount actually required for the purposes of the new corporation, as estimated by competent engineers), and the number of shares into which it is divided; seventh, the amount of stock actually subscribed, and by whom; eighth, the termini of its road or roads and branches; ninth, the estimated length of its road or roads and branches; tenth, the names of the constituent corporations, and the terms and conditions of consolidation in full. Said articles of incorporation and consolidation must be signed and countersigned by the presidents and secretaries of the several constituent corporations and sealed with their corporate seals. There must be annexed thereto memoranda of the ratification and confirmation thereof by the stockholders of each constituent corporation, which must be respectively signed by stockholders representing at least three-fourths of the capital stock of their respective corporations. When completed as aforesaid said articles must be filed in the office of the county clerk of the county in which the original articles of incorporation of either of the consolidating corporations are filed, and a copy of the articles of incorporation and consolidation certified by such county clerk must be filed in the office of the secretary of state, and thereupon the constituent corporations named therein must be deemed and held to have become extinct in all courts and places, and said new corporation must be deemed and held in all courts and places to have succeeded to all their several capital stocks, properties, roads, equipments, adjuncts, franchises, claims, demands, contracts, agreements, assets, choses and rights in action of every kind and description, both at law and in equity, and to be entitled to possess, enjoy, and enforce the same and every thereof, as fully and completely as either and every of its con-

stituents might have done had no consolidation taken place. Said consolidated or new corporation must also, in all courts and places, be deemed and held to have become subrogated to its several constituents and each thereof, in respect to all their contracts and agreements with other parties, and all their debts, obligations, and liabilities, of every kind and nature, to any persons, corporations, or bodies politic, whomsoever, or whatsoever, and said new corporation must sue and be sued in its own name in any and every case in which any or either of its constituents might have sued or might have been sued at law or in equity had no such consolidation been made. Nothing in this section contained shall be construed to impair the obligation of any contract to which any of such constituents were parties at the date of such consolidation. All such contracts may be enforced by action or suit, as the case may be, against the consolidated corporation, and satisfaction obtained out of the property which, at the date of the consolidation, belonged to the constituent which was a party to the contract in action or suit, as well as out of any other property belonging to the consolidated corporation.

Traffic Agreements and Leases.

C. C. Sec. 473a. Railroad corporations doing business in this state and organized under any law of this state or the United States, or of any state or territory thereof, have power to enter into contracts with one another, whereby the one may lease of the other the whole or any part of its railroad, or may acquire of the other the right to use, in common with it, the whole or any part of its railroad.

Powers.

C. C. Sec. 465. Every railroad corporation has power:

1. To cause such examination and surveys to be made as may be necessary to the selection of

the most advantageous route for the railroad; and for such purposes its officers, agents, and employes may enter upon the lands or waters of any person, subject to liability for all damages which they do thereto;

2. To receive, hold, take, and convey, by deed or otherwise, as a natural person, such voluntary grants and donations of real estate and other property which may be made to it to aid and encourage the construction, maintenance, and accommodation of such railroad;

3. To purchase, or by voluntary grants or donations to receive, enter, take possession of, hold, and use all such real estate and other property as may be absolutely necessary for the construction and maintenance of such railroad, and for all stations, depots, and other purposes necessary to successfully work and conduct the business of the road;

4. To lay out its road, not exceeding nine rods wide, and to construct and maintain the same with a single or double track, and with such appendages and adjuncts as may be necessary for the convenient use of the same;

5. To construct its road across, along, or upon any stream of water, watercourse, roadstead, bay, navigable stream, street, avenue, or highway, or across any railway, canal, ditch, or flume which the route of its road intersects, crosses, or runs along, in such manner as to afford security for life and property; but the corporation must restore the stream or watercourse, road, street, avenue, highway, railroad, canal, ditch, or flume thus intersected to its former state of usefulness, as near as may be, or so that the railroad shall not unnecessarily impair its usefulness or injure its franchise;

6. To cross, intersect, join, or unite its railroad with any other railroad, either before or after construction, at any point upon its route, and upon the grounds of such other railroad cor-

poration, with the necessary turnouts, sidings, and switches, and other conveniences in furtherance of the objects of its connections; and every corporation whose railroad is, or shall be hereafter, intersected by any new railroad, must unite with the owners of such new railroad in forming such intersections and connections, and grant facilities therefor; and if the two corporations cannot agree upon the amount of compensation to be made therefor, or the points or the manner of such crossings, intersections, and connections, the same must be ascertained and determined as is provided in title seven, part three, of the Code of Civil Procedure;

7. To purchase lands, timber, stone, gravel or other materials, to be used in the construction and maintenance of its road, and all necessary appendages and adjuncts, or acquire them in the manner provided in title seven, part three, of the Code of Civil Procedure, for the condemnation of lands; and to change the line of its road, in whole or in part, whenever a majority of the directors so determine, as is provided hereinafter; but no such change must vary the general route of such road, as contemplated in its articles of incorporation;

8. To carry persons and property on its railroad, and receive tolls or compensation therefor;

9. To erect and maintain all necessary and convenient buildings, stations, depots, fixtures, and machinery for the accommodation and use of its passengers, freight, and business;

10. To regulate the time and manner in which passengers and property must be transported, and the tolls and compensation to be paid therefor, within the limits prescribed by law and subject to alteration, change, or amendment by the legislature at any time;

11. To regulate the force and speed of its locomotives, cars, trains, or other machinery used and employed on its road, and to establish,

execute, and enforce all needful and proper rules and regulations for the management of its business transactions usual and proper for railroad corporations.

No Passes to Public Officials.

Const. Art. XII, Sec. 19. No railroad or other transportation company shall grant free passes, or passes or tickets at a discount, to any person holding any office of honor, trust, or profit in this state; and the acceptance of any such pass or ticket, by a member of the legislature or any public officer, other than railroad commissioner, shall work a forfeiture of his office.

Pooling Traffic—Earnings Unlawful.

Const. Art. XII, Sec. 20. No railroad company or other common carrier shall combine or make any contract with the owners of any vessel that leaves port or makes port in this state, or with any common carrier, by which combination or contract the earnings of one doing the carrying are to be shared by the other not doing the carrying. And whenever a railroad corporation shall, for the purpose of competing with any other common carrier, lower its rates for transportation of passengers or freight from one point to another, such reduced rates shall not be again raised or increased from such standard without the consent of the government authority in which shall be vested the power to regulate fares and freights.

Power to Create Bonded Debt.

C. C. Sec. 456. Railroad corporations may borrow, on the credit of the corporation and under such regulations and restrictions as the board of directors thereof, by unanimous concurrence, may impose, such sums of money as may be necessary for constructing and completing their railroad, with its equipments, and for the purchase of all necessary rolling stock and all else relative thereto, and may issue promissory notes

therefor, or may issue and dispose of bonds to raise moneys necessary to pay therefor, at a rate of interest not exceeding ten per cent. per annum; and may also issue bonds, or promissory notes, at the same rate of interest in payment of any debts or contracts for constructing and completing their road, with its equipments and rolling stock, and all else relative thereto, and for the purchase of railroads and other property within the purpose of the corporation. The amount of bonds, or promissory notes, issued for such purposes must not exceed in all the amount of their capital stock; and to secure the payment of such bonds, or notes, they may mortgage their corporate property and franchises, or may secure the payments of such bonds, or notes, by deed of trust of their corporate property and franchises. Any person or corporation formed under the laws of this state, or of any other state within the United States, that the directors of the railroad corporation may, by unanimous concurrence, select, may be trustees in such deed of trust.

Sinking Fund Required.

C. C. Sec. 457. The directors must provide a sinking fund, to be specially applied to the redemption of such bonds on or before their maturity, and may also confer on any holder of any bond or note so issued, for money borrowed or in payment of any debt or contract for the construction and equipment of such road, the right to convert the principal due or owing thereon into stock of such corporation, at any time within eight years from the date of such bonds, under such regulations as the directors may adopt.

Franchises for Elevated or Underground Roads.

C. C. Sec. 460. The legislative or other body to whom is intrusted the government of the county, city, or town, under such regulations, restrictions, and limitations and upon such terms and payment of license tax as the county, city,

or town authority may provide, may grant to any railway corporation heretofore or hereafter incorporated, franchises for the construction of elevated or underground railroad tracks over, across, or under the streets and public highways of any such county, city, or town, for a term not exceeding fifty years; provided, that before granting such franchise there must be presented to such legislative or other body a petition signed by the owners of a majority of the landed property, other than public property, on the line of said elevated portion applied for.

Motive Power—What May be Used.

C. C. Sec. 465a. Every person or corporation now, or hereafter authorized to operate a railroad by steam motive power, is also authorized to use electricity or compressed air, or both, either with or without such steam, for the purpose of propelling cars or trains on such railroad or upon any portion thereof. In incorporated cities, towns, or cities and counties having more than five thousand inhabitants, authority must first be obtained from the legislative authority thereof.

Map and Profile to be Filed.

C. C. Sec. 466. Every railroad corporation in this state must, within a reasonable time after its road is finally located, cause to be made a map and profile thereof, and of the land acquired for the use thereof, and the boundaries of the several counties through which the road may run, and file the same in the office of the secretary of state; and also like maps of the parts thereof located in different counties, and file the same in the office of the clerk of the county in which such parts of the road are, there to remain of record forever. The maps and profiles must be certified by the chief engineer, the acting president and secretary of such company, and copies of the same, so certified and filed, be kept in the office of the secretary of the corporation, subject to examination by all parties interested.

Power to Change Line of Road.

C. C. Sec. 467. If, at any time after the location of the line of the railroad and the filing of the maps and profiles thereof, as provided in the preceding section, it appears that the location can be improved, the directors may, as provided in subdivision 7, section 465 C. C., alter or change the same, and cause new maps and profiles to be filed, showing such changes, in the same offices where the originals are of file, and may proceed, in the same manner as the original location was acquired, to acquire and take possession of such new line, and must sell or relinquish the lands owned by them for the original location, within five years after such change. No new location, as herein provided, must be so run as to avoid any points named in their articles of incorporation.

Time of Commencement and Completion of Road.

C. C. Sec. 468. Every railroad corporation must, within two years after filing its original articles of incorporation, begin the construction of its road, and must every year thereafter complete and put in full operation at least five miles of its road, until the same is fully completed; and upon its failure so to do, for the period of one year, its right to extend its road beyond the point then completed is forfeited. After the completion of any railroad, or any part thereof, capable of being operated, its owner must operate it, and upon his failure to keep it, or any part thereof, in full operation for the period of six months, his right to operate it in whole or in part, as the case may be, is forfeited, and the lands occupied for the purposes of the road, so far as the same is not operated, revert to the original owners or their successors in interest. A railroad is in full operation when one passenger train, or one mixed train, is run over it once a day in each direction and a sufficient number of freight trains to accommodate the traffic on

the road. If a railroad is wholly constructed at an elevation of five thousand feet or more above the level of the sea, its owner is not required to maintain and operate it, nor to run passenger or other trains thereon, between the fifteenth of October of any year and the fifteenth of May of the year following. This section must not be construed to require the operation of a road when prevented by the act of God, nor when the operation of the road, together with its branch and trunk lines, does not yield income sufficient to defray the expenses of maintaining and operating it in connection with its branch and trunk lines. The railroad commissioners have the power to examine and determine whether a railroad, together with its branch and trunk lines, yield income sufficient to operate the same.

Intersecting Roads.

C. C. Sec. 469. Whenever the track of one railroad intersects or crosses the track of another railroad, whether the same be a street railroad, wholly within the limits of a city or town, or other railroad, the rails of either or each road must be so cut and adjusted as to permit the passage of the cars on each road with as little obstruction as possible; and, in case the persons or corporations owning the railroads cannot agree as to the compensation to be made for cutting and adjusting the rails, the condemnation of the right of way over the one for the use of the other road, may be had in proceedings under title VII, part III, C. C. P., and the damages assessed and the right of way granted as in other cases.

Franchises in Incorporated City or Town.

C. C. Sec. 470. No railroad corporation must use any street, alley, or highway, or any of the land or water, within any incorporated city or town, unless the right to so use the same is granted by a two-third vote of the town or city authority from which the right must emanate.

Crossings.

C. C. Sec. 472. Whenever the track of such railroad crosses a railroad or highway, such railroad or highway may be carried under, over, or on a level with the track, as may be most expedient; and in cases where an embankment or cutting necessitates a change in the line of such railroad or highway, the corporation may take such additional lands and material as are necessary for the construction of such road or highway on such new line. If such other necessary lands cannot be had otherwise, they may be condemned as provided in title VII, part III, Code of Civil Procedure; and when compensation is made therefor, the same becomes the property of the corporation. [Secs. 1237-1263.]

Right of Way Over State Lands.

C. C. Sec. 474. There is granted to every railroad corporation the right of way for the location, construction, and maintenance of their necessary works, and for every necessary adjunct thereto, over any swamp, overflowed, or other public lands of the state not otherwise disposed of or in use, not in any case exceeding in length or width that which is necessary for the construction of such works and adjuncts; or for the protection thereof, not in any case to exceed two hundred feet in width.

C. C. Sec. 475. The grants mentioned in the preceding section do not apply to public lands of the state within the corporate limits of towns and cities, or within three miles thereof.

C. C. Sec. 476. The right to take from any of the lands belonging to the state, adjacent to the works of the corporation, all materials, such as wood, stone, and earth, naturally appurtenant thereto, which may be necessary and convenient for the original construction of its works and adjuncts, is granted to such corporations.

C. C. Sec. 477. If any corporation receiving state lands or appurtenances thereunder is dis-

solved, ceases to exist, is discontinued, or the route or line of its works is so changed as not to cover or cross the lands selected, or the use of the lands selected is abandoned, such selected lands revert, and the title thereto is reinvested in the state or its grantees, free from all such uses.

C. C. Sec. 478. When any selection of the right of way, or land for an adjunct to the works of a railroad corporation, is made by any corporation, the secretary thereof must transmit to the surveyor general, controller of state, and recorder of the county in which the selected lands are situate, a plat of the lands so selected, giving the extent thereof and uses for which the same is claimed or desired, duly verified to be correct; and, if approved, the surveyor general must so indorse the plat, and issue to the corporation a permit to use the same, unless on petition properly presented to the court, a review is had and such use prohibited.

Power to Alienate Franchises and Property.

C. C. Sec. 494. Any railroad corporation owning any railroad in this state may sell, convey and transfer its property and franchises, or any part thereof, to any other railroad corporation, whether organized under the laws of this state or of any other state or territory, or under any act of congress; and any other such railroad corporation receiving such conveyance may hold and operate such railroad franchises and property within this state, build and operate extensions and branches thereof, and thereunto exercise the right of eminent domain, and do any other business in connection therewith, as fully and effectually to all intents and purposes as if such corporation were organized under the laws of this state; provided, that such sale, conveyance and transfer shall be made within three years from the date this act shall take effect; and provided further, that before such sale, conveyance or

transfer shall become operative, an agreement in writing must be executed by the parties thereto, containing the terms and conditions of the purchase and sale, and its execution must be authorized by the board of directors and ratified by three-fourths of the stockholders of each of the railroad companies that are parties to such conveyance and transfer, and said agreement or conveyance shall be recorded in each county through which said road or roads pass in this state; and provided further, that no sale, conveyance or transfer under this act shall relieve the franchise or property sold, conveyed or transferred from the liability of the grantor contracted or incurred in the operation, use or enjoyment of such franchise or any of its privileges; provided, that this section shall not authorize any corporation to purchase any railroad property operated in competition with it; and provided, however, corporations operating any railroad or part of a railroad under lease shall be entitled to purchase such leased property (whether competitive or otherwise) under the provisions and subject to the conditions of this act; and provided further, that any or all established rates for fares and tolls for carrying passengers or freight between any points upon any railroad purchased under the provisions of this act, shall not be increased without the consent of the governmental authority in which is vested by law the power to regulate fares and freights; and provided further, that whenever a railroad corporation, which has purchased any line of road under this act, shall for the purpose of competing with any other common carrier lower its rates for transportation of passengers or freight from one point to another upon such line purchased, such reduced rates shall not be again raised or increased from such standard without the consent of the governmental authority in which shall be vested the power to regulate fares and freights; and pro-

vided further, that for every violation of the provisions of this act on the part of directors, or other governing officers of said corporation, the state shall be entitled to recover from such offending railroad company the sum of ten thousand dollars. It is hereby declared to be the duty of the attorney-general of the state, in the event of any such violation, to demand and collect from such company the said penalty; and he is hereby authorized and empowered to prosecute all the necessary actions in the name of the people of the state of California against such company in the courts of the state. All money so collected shall be paid into the general fund of this state. [In effect at passage. Signed March 22, 1899; deposited with secretary of state March 28, 1899.]

No Discrimination in Rates.

Const. Art. XII, Sec. 21. No discrimination in charges or facilities for transportation shall be made by any railroad or other transportation company between places or persons, or in the facilities for the transportation of the same class of freight or passengers within this state, or coming from or going to any other state. Persons and property transported over any railroad, or by any other transportation company or individual, shall be delivered at any station, landing or port, at charges not exceeding the charges for the transportation of persons and property of the same class, in the same direction, to any more distant station, port or landing. Excursion and commutation tickets may be issued at special rates.

Baggage to be Checked.

C. C. Sec. 479. A check must be affixed to every package or parcel of baggage when taken for transportation by any agent or employee of such railroad corporation, and a duplicate thereof given to the passenger or person delivering the same in his behalf; and if such check is refused on

demand, the railroad corporation must pay to such passenger the sum of twenty dollars, to be recovered in an action for damages; and no fare or toll must be collected or received from such passenger, and if such passenger has paid his fare, the same must be returned by the conductor in charge of the train; and on producing the check, if his baggage is not delivered to him by the agent or employe of the railroad corporation, he may recover the value thereof from the corporation.

Time-Tables to be Published.

C. C. Sec. 481. Every such corporation must start and run its cars, for the transportation of persons and property, at such regular times as it shall fix by public notice, and must furnish sufficient accommodations for the transportation of all such passengers and property as, within a reasonable time previous thereto, offer or is offered for transportation, at the place of starting, at the junction of other railroads, and at siding and stopping-places established for receiving and discharging way passengers and freight; and must take, transport, and discharge such passengers and property at, from, and to such places, on the due payment of tolls, freight, or fare therefor.

Damages for Refusal to Furnish Transportation.

C. C. Sec. 482. In case of refusal by such corporation or their agents so to take and transport any passengers or property or to deliver the same, at the regular appointed places, such corporation must pay to the party aggrieved all damages which are sustained thereby, with costs of suit.

Seats in Cars.

C. C. Sec. 483. Every railroad corporation must furnish, on the inside of its passenger cars, sufficient room and accommodations for all passengers to whom tickets are sold for any one



trip, and for all persons presenting tickets entitling them to travel thereon; and when fare is taken for transporting passengers on any baggage, wood, gravel, or freight car, the same care must be taken and the same responsibility is assumed by the corporation as for passengers on passenger cars.

Rules and Regulations to be Posted in Cars.

C. C. Sec. 484. Every railroad corporation must have printed and conspicuously posted on the inside of its passenger cars its rules and regulations regarding fare and conduct of its passengers; and in case any passenger is injured on or from the platform of a car, or on any baggage, wood, gravel, or freight car, in violation of such printed regulations, or in violation of positive verbal instructions or injunctions given to such passenger in person by any officer of the train, the corporation is not responsible for damages for such injuries, unless the corporation failed to comply with the provisions of the preceding section.

Fences to be Maintained—Penalty.

C. C. Sec. 485. Railroad corporations must make and maintain a good and sufficient fence on either or both sides of their track and property. In case they do not make and maintain such fence, if their engine or cars shall kill or maim any cattle or other domestic animals upon their line of road which passes through or along the property of the owner thereof, they must pay to the owner of such cattle or other domestic animals a fair market price for the same, unless it occurred through the neglect or fault of the owner of the animal so killed or maimed. Railroad corporations paying to the owner of the land through or along which their road is located an agreed price for making and maintaining such fence, or paying the cost of such fence with the award of damages allowed for the right of way for such railroad, are relieved and exonerated

from all claims for damages arising out of the killing or maiming any animals of persons who thus fail to construct and maintain such fence; and the owners of such animals are responsible for any damages or loss which may accrue to such corporation from such animals being upon their railroad track, resulting from the non-construction of such fence, unless it is shown that such loss or damage occurred through the negligence or fault of the corporation, its officers, agents, or employes.

Bell on Locomotive.

C. C. Sec. 486. A bell, of at least twenty pounds weight, must be placed on each locomotive engine, and be rung at a distance of at least eighty rods from the place where the railroad crosses any street, road, or highway, and be kept ringing until it has crossed such street, road, or highway; or a steam whistle must be attached, and be sounded, except in cities, at the like distance, and be kept sounding at intervals until it has crossed the same, under a penalty of one hundred dollars for every neglect, to be paid by the corporation operating the railroad, which may be recovered in an action prosecuted by the district attorney of the proper county, for the use of the state. The corporation is also liable for all damages sustained by any person, and caused by its locomotives, train, or cars, when the provisions of this section are not complied with.

Right to Eject Passengers—When and Where.

C. C. Sec. 487. If any passenger refuses to pay his fare, or to exhibit or surrender his ticket, when reasonably requested so to do, the conductor and employes of the corporation may put him and his baggage out of the cars, using no unnecessary force, at any usual stopping place, or near any dwelling house, on stopping the train.

Employes to Wear Badges.

C. C. Sec. 488. Every conductor, baggage mas-

ter, engineer, brakeman, or other employe of any railroad corporation, employed on a passenger train or at stations for passengers, must wear upon his hat or cap, or in some conspicuous place on the breast of his coat, a badge, indicating his office or station, and the initial letters of the name of the corporation by which he is employed. No collector or conductor, without such badge, is authorized to demand or to receive from any passenger any fare, toll, or ticket, or exercise any of the powers of his office or station; and no other officer or employe, without such badge, has any authority to meddle or interfere with any passenger or property.

Tickets.

C. C. Sec. 490. Every railroad corporation must provide, and on being tendered the fare therefor fixed, as provided in the preceding section, furnish to every person desiring a passage on their passenger cars a ticket, which entitles the purchaser to a ride, and to the accommodations provided on their cars, from the depot or station where the same is purchased to any other depot or station on the line of their road. Every such ticket entitles the holder thereof to ride on their passenger cars to the station or depot of destination, or any intermediate station, and from any intermediate station to the depot of destination designated in the ticket, at any time within six months thereafter. Any corporation failing so to provide and furnish tickets, or refusing the passage which the same calls for when sold, must pay to the person so refused all actual damages caused thereby, with reasonable counsel fees expended in recovering same.

Rails—What Kinds May be Used.

C. C. Sec. 491. All railroads, other than street railroads and those used exclusively for carrying freight or for mining purposes, built by corporations organized under this chapter, must be con-

structed of the best quality of iron or steel rails, known as T or H rail, or other pattern of equal utility.

Power of Railroad Commission to Fix Rates.

C. C. Sec. 489. Whenever the board of railroad commissioners, in the discharge of its duties, establishes or adopts rates of charges for the transportation of passengers and freight, pursuant to the provisions of the constitution, said board must serve a printed schedule of such rates, and of any changes that may be made in such rates, upon the person, copartnership, company, or corporation affected thereby; and upon such service, it is the duty of such person, copartnership, company, or corporation to immediately cause copies of the same to be posted in all its offices, stationhouses, warehouses, and landing offices affected by such rates, or change of rates, in such manner as to be accessible to public inspection during usual business hours. Said board must also make such further publication thereof as it deems proper and necessary for the public good. If the party to be served is a corporation, such service may be made upon the president, vice-president, secretary, or managing agent thereof, and if a copartnership, upon any partner thereof. The rates of charges established or adopted by said board pursuant to the constitution and the laws of this state must go into force and effect on the twentieth day after service of said schedule of rates, or changes in rates, upon the person, copartnership, company, or corporation affected thereby.

Capital Stock to be Fixed.

C. C. Sec. 458. When, at any time after filing the articles of incorporation, it is ascertained that the capital stock therein set out is either more or less than actually required for constructing, equipping, operating, and maintaining the road, by a two-third vote of the stockholders the

capital stock must be fixed, and a certificate thereof, and of the proceedings had to fix the same, must be made out and filed in the office of the secretary of state.

C. C. Sec. 459. Within thirty days after the payment of the last installment of the fixed capital stock of any railroad corporation organized under this title and part, the president and secretary and a majority of the directors thereof must make, subscribe, and file in the office of the secretary of state a certificate, stating the amount of the fixed capital stock, and that the whole thereof has been paid in. The certificate must be verified by the affidavit of the president and secretary.

Assessment of Stock.

C. C. Sec. 455. No stock in any railroad corporation is transferable until all the previous calls or installments thereon have been fully paid in; nor is any such transfer valid, except as between the parties thereto, unless at least twenty per cent has been paid thereon and certificates issued therefor, and the transfer approved by the board of directors.

Liability of Officers for Exceeding the Debt-Limit.

Pen. C. Sec. 566. Every officer, agent, or stockholder of any railroad company, who knowingly assents to, or has any agency in contracting any debt by or on behalf of such company, unauthorized by a special law for the purpose, the amount of which debt, with other debts of the company, exceeds its available means for the payment of its debts, in its possession, under its control, and belonging to it at the time such debt is contracted, including its bona fide and available stock subscriptions, and exclusive of its real estate, is guilty of a misdemeanor.

Effect of Exceeding the Debt-Limit.

Pen. C. Sec. 567. The last section does not affect the validity of a debt created in violation of its provisions, as against the company.

Election and Removal of Directors.

Constitution, Art. XII, Sec. 18, p. 470, *supra*.

C. C. Sec. 454. Directors of railroad corporations may be elected at a meeting of the stockholders other than the annual meeting, as a majority of the fixed capital stock may determine, or as the by-laws may provide; notice thereof to be given as provided for notices of meetings to adopt by-laws in Article II, Chapter I, Title I, of this part. [Sec. 301, 321.]

Penal Liabilities of Officers and Agents.

Penal Code 566, p. 568, *supra*.

Penal Code 567, above.

Annual Report—What to Contain.

C. C. Sec. 480. Every railroad corporation must make an annual report to the secretary of state, or other officer designated by law, of its operations for each year, ending on the thirty-first day of December, verified by the oaths of the president or acting superintendent of operations, the secretary and treasurer of such corporation, and file it in the office of the secretary of state, or such other designated officer, by the twentieth day of February, which must state:

1. The capital stock, and the amount thereof actually paid in;
2. The amount expended for the purchase of lands for the construction of the road, for buildings, and for engines and cars, respectively;
3. The amount and nature of its indebtedness, and the amount due the corporation;
4. The amount received from the transportation of passengers, property, mails, and express matter, and from other sources;
5. The amount of freight, specifying the quantity in tons;

6. The amount paid for repairs of engines, cars, buildings, and other expenses, in gross, showing the current expenses of running such roads;

7. The number and amount of dividends, and when paid;

8. The number of engine houses and shops, of engines and cars, and their character.

Foreign Railroad Corporations.

C. C. Sec. 407. Every railway or other corporation organized for the purpose of carrying freight or passengers under or by virtue of the laws of the United States, or of any state or territory thereof, may build railroads, exercise the right of eminent domain, and transact any other business which it might do if it were created and organized under or by virtue of the laws of this state, and has the same rights, privileges, and immunities, and is subject to the same laws, penalties, obligations, and burdens as if created or organized under and by virtue of the laws of this state.

Religious Associations.

How Incorporated.

Articles of Incorporation—Form and Contents.

Power to Take by Will.

Trustees or Directors—How Elected.

Books and Records—What to Keep.

How Incorporated.

C. C. Sec. 603. Whenever the regulations, rules, or discipline of any church or religious society require, for the administration of the temporalities thereof, or for the management of the property or estate thereof, any diocese, synod, or district organization of such church or religious society may elect directors and become an incorporation in the manner prescribed in this title, and with all the powers and duties, and for the uses and purposes in this title provided for benevolent or religious incorporations, and subject to all the conditions, limitations, and provisions in said title prescribed, except as otherwise provided in this section; provided, that directors of such incorporation may be elected, and that the by-laws for its government may be made and amended by the convention, synod, or other representative body of such church or religious society, in and for such district, in accordance with the constitution, by-laws, discipline, or regulation thereof, at any regular meeting, or special meeting called for that purpose; and provided, the certificate of incorporation and of the election of directors to be filed shall be sufficiently signed and attested by the signature of the presiding officer and secretary of the representative convention, synod, or other such body, in which such election is held; and, provided, all property held by such incorporation shall be in trust for the

use, benefit, and purpose of the church or religious society by and for which such incorporation was formed, and in and of which such diocese, synod, or other district is an organized or constituent part; and that the limitation in section five hundred and ninety-five shall not apply to corporations formed under this section, when the land is held or used for churches, hospitals, schools, colleges, asylums, parsonages, or cemetery purposes.

Articles of Incorporation—Form and Contents.

C. C. Sec. 604. Any church or other religious association in this state, composed of two or more constituent parishes, missions, congregations, or societies, having a common convention, synod, council, or other representative legislative body, may be incorporated by such representative body under this part and subject to the provisions of this title, except as otherwise provided in this section. The representative body of such religious association electing to incorporate the same shall determine the name of the proposed corporation, the purpose for which it is formed, the place where its principal business is to be transacted, the term for which it is to exist, and the number of its directors, and shall elect its directors for the first year. The articles of incorporation need only be signed and acknowledged by the presiding officer and secretary of such representative body, and in addition to the requirements of section two hundred and ninety. shall set forth the proceedings herein prescribed for said representative body, and that the same were duly had in accordance with the constitution, canon, rules, or regulations governing the other proceedings of said representative body, and the time and place thereof. The directors of such corporation shall be elected annually by the representative body of the association. The representative body providing for such incorporation shall frame by-laws for the corporation, and

such by-laws may be repealed or amended, or new by-laws may be adopted by any subsequent representative body in accordance with the constitution, canons, rules, or regulations governing the other proceedings of such representative body. Such corporation may hold and administer not only the common property, funds and money of such association, but also the property funds and money of any constituent parish, mission, congregation or society. The limitation in section 595 C. C. shall not apply to corporations formed under this section when the land is held or used for churches, hospitals, schools, asylums, parsonages, or cemetery purposes.

Power to Take by Will.

Civil Code 1275, p. 396, *supra*.

Trustees or Directors—How Elected.

Civil Code 307, p. 419, *supra*.

Books and Records—What to Keep.

Civil Code 378, p. 433, *supra*.

Constitution, Art. XII, sec. 14, p. 432, *supra*.

Road Companies.

Articles of Incorporation—What to Contain.
Power to Bond the Road.
Road—How Laid Out.
Power to Bridge, or Keep Ferries on, Streams.
Power to Take Tolls.
Terms of Franchise to be Posted on Toll-Gates.
Power and Liabilities of Toll-Gatherers.
Penalty for Wrongful Avoidance of Tolls.
Penalty for Injury to Company's Property.
Rates of Toll to be Apportioned.
Franchises for Bicycle-Paths.

Articles of Incorporation—What to Contain.

Civil Code 291, p. 548, supra.
Civil Code 293, p. 548, supra.
Civil Code 294, p. 548, supra.
Civil Code 295, p. 549, supra.

Power to Bond the Road.

C. C. Sec. 522. The corporation may mortgage or hypothecate its road and other property for funds with which to construct or repair its road, but no mortgage or hypothecation is valid or binding unless at least twenty-five per cent of the capital stock subscribed has been paid in and invested in the construction of the road and appurtenances, and then only after an affirmative vote of two-thirds of the capital stock subscribed.

Road—How Laid Out.

C. C. Sec. 512. Where a corporation is formed for the construction and maintenance of a wagon road, the road must be laid out as follows:

Three commissioners must act in conjunction with the surveyor of the corporation, two to be appointed by the board of supervisors of the county through which the road is to run, and

one by the corporation, who must lay out the proposed road and report their proceedings, together with the map of the road, to the supervisors, as provided in the succeeding section.

C. C. Sec. 513. When the route is surveyed a map thereof must be submitted to and filed with the board of supervisors of each county through or into which the road runs, giving its general course, and the principal points to or by which it runs, and its width, which must in no case exceed one hundred feet, and the supervisors must either approve or reject the survey. If approved, it must be entered of record on the journal of the board, and such approval authorizes the use of all public lands and highways over which the survey runs; but the board of supervisors must require the corporation, at its own expense, and the corporation must so change and open the highways so taken and used as to make the same as good as before the appropriation thereof; and must so construct all crossings of public highways over and by its road and toll gates, as not to hinder or obstruct the use of the same.

Power to Bridge, or Keep Ferries on, Streams.

C. C. Sec. 514. All wagon road corporations may bridge or keep ferries on streams on the line of their road, and must do all things necessary to keep the same in repair. They may take such tolls only on their roads, ferries, or bridges, as are fixed by the board of supervisors of the proper county through which the road passes, or in which the ferry or bridge is situate. But in no case must the tolls be more than sufficient to pay fifteen per cent., nor less than ten per cent per annum, on the cost of construction, after paying for repairs and other expenses for attending to the roads, bridges, or ferries. If tolls, other than as herein provided, are charged or demanded, the corporation forfeits its fran-

chise, and must pay to the party so charged one hundred dollars as liquidated damages.

Power to Take Tolls.

C. C. Sec. 515. When any highway or public road is taken and used by any wagon road corporation as a part of its road, the corporation must not place a toll gate on or take tolls for the use of such highway or public road by teamsters, travelers, drovers, or any one transporting property over the same.

Terms of Franchise to be Posted on Toll-Gates.

C. C. Sec. 516. The corporation must affix and keep up, at or over each gate, or in some conspicuous place, so as to be conveniently read, a printed list showing, first, the date when the franchise or privilege under which the right to collect tolls is claimed, was granted and the term of duration of said franchise; second, the date upon which rates of tolls were last fixed by the board of supervisors; and, third, the rates of tolls levied and demanded. Failure to comply with the provisions of this act shall work an immediate forfeiture of franchise.

Powers and Liabilities of Toll-Gatherers.

C. C. Sec. 517. Each toll-gatherer may prevent from passing through his gate any person, animal, or vehicle, subject to toll, until the toll authorized to be collected for such passing has been paid.

C. C. Sec. 518. Every toll-gatherer who, at any gate, unreasonably hinders or delays any traveler or passenger or any vehicle or animal liable to the payment of toll, or demands or receives from any person more than he is authorized to collect, for each offense forfeits the sum of twenty-five dollars to the person aggrieved.

Penalty for Wrongful Avoidance of Tolls.

C. C. Sec. 519. Every person who, to avoid the payment of the legal toll, with his team, vehicle, or horse, turns out of a wagon, turn-

pike, or plank road, or passes any gate thereon on ground adjacent thereto, and again enters upon such road, for each offense forfeits the sum of five dollars to the corporation injured.

Penalties for Injury to Company's Property.

C. C. Sec. 520. Every person who:

1. Willfully breaks, cuts down, defaces, or injures any mile stone or post on any wagon, turn-pike, or plank road; or,

2. Willfully breaks or throws down any gate on such road; or,

3. Digs up or injures any part of such road or anything thereunto belonging; or,

4. Forcibly or fraudulently passes any gate thereon without having paid the legal toll;

For each offense forfeits to the corporation injured the sum of twenty-five dollars, in addition to the damages resulting from his wrongful act.

Rates of Toll to be Apportioned.

C. C. Sec. 521. The entire revenue derived from the road shall be appropriated: first, to repayment to the corporation of the costs of its construction, together with the incidental expenses incurred in collecting tolls and keeping the road in repair; and, second, to the payment of the dividend among its stockholders, as provided in section five hundred and fourteen. When the repayment of the cost of construction is completed, the tolls must be so reduced as to raise no more than an amount sufficient to pay said dividend, and incidental expenses, and to keep the road in good repair.

Franchises for Bicycle-Paths.

C. C. Sec. 524. The legislative or other body to whom is intrusted the government of any county, city and county, city, or town, may, under such regulations, restrictions, and limitations as it may provide, subject to existing laws, grant franchises for the construction of paths and roads, either on the surface, elevated, or de-

pressed, on, over, across, or under the streets and public highways of any such county, city, or town, for the use of bicycles, tricycles, motorcycles, and other like horseless vehicles, propelled by the rider, for a term not exceeding fifty years. In incorporated cities no franchise must be granted for the purpose herein expressed, unless the consent in writing of the owners of a majority of the frontage upon the road or street along which said path or road is sought to be constructed, is first had and obtained, and filed with such legislative or governing body.

Social Organizations.

SOCIAL ORGANIZATIONS.

Powers.

Power to Take by Devise.

Powers.

C. C. Sec. 599. Corporations now organized or that may hereafter be organized for purposes other than profit, may, either in their by-laws, ordinances, constitutions, or articles of incorporation, provide for:

1. The qualification of members, mode of election or appointment, and terms of admission to membership;

2. The fees of admission and dues to be paid to their treasury by members;

3. The number of persons that shall constitute a quorum at any meeting of the corporation, and that an election of officers of the corporation by a meeting so constituted or the appointment or selection of such officers, or any of them, in any manner required by the rules, regulations, or discipline of any specified religious denomination, society, or church shall be as valid as if made at an election at which a majority of the members of the corporation were present and voted;.

4. The expulsion and suspension of members for misconduct or nonpayment of dues, also for restoration to membership;

5. A special method of organizing the board of directors, and a special method of increasing or diminishing the number of directors within the limits as to number prescribed by section five hundred and ninety-three of this code;

6. Contracting, securing, paying, and limiting the amount of their indebtedness;

7. That the rules, regulations, or discipline for the time being, of any specified religious denomination, society, or church, shall always be a part of their by-laws, ordinances, constitutions, or articles of incorporation;

8. Other regulations not repugnant to the constitution or laws of the state and consonant with the objects of the corporation.

Power to Take by Devise.

Civil Code 1275, p. 396, *supra*.

Societies for the Prevention of Cruelty.

How Formed.

What Societies Subject to the Code.

Power to Take and Hold Property.

Powers of Members.

Fines Inure to the Society—When.

Members May Become Peace Officers.

Proceedings Against Minors.

Directors—How Elected.

How Formed.

C. C. Sec. 607. Corporations may be formed by any number of persons not less than five, a majority of whom must be citizens and residents of this state, under the general provisions of this code, for the purpose of the prevention of cruelty to children or animals, or both.

What Societies Subject to the Code.

C. C. Sec. 607d. The provisions of this title extend to all corporations heretofore formed and existing for the prevention of cruelty to children or animals, but do not extend or apply to any association, society, or corporation which uses or specifies a name or style the same, or substantially the same, as that of any previously existing society or corporation in this state organized for a like purpose.

Power to Take and Hold Property.

C. C. Sec. 607a. Every such corporation may take and hold, by gift, purchase, devise, or bequest, any property, real or personal, and dispose of the same at its pleasure; but it must not hold real property the annual income of which exceeds fifty thousand dollars.

Powers of Members.

C. C. Sec. 607b. Any such corporation, or any member or officer thereof, may prefer a complaint against any person or persons, before any court or magistrate having jurisdiction, for the violation of any law relating to or affecting children or animals, and may aid in the prosecution of any such offender before such court or magistrate in any proceeding taken.

C. C. Sec. 607c. All magistrates, constables, sheriffs, and officers of police must, as occasion may require, aid any such corporation, its officers, members, and agents, in the enforcement of all laws which are now or may be hereafter enacted relating to or affecting children or animals.

Fines Inure to the Society—When.

C. C. Sec. 607e. All fines, penalties, and forfeitures imposed and collected in any county of this state under the provisions of any law of this state, now or hereafter enacted, relating to or affecting children or animals, in every case where the prosecution was instituted, aided, or conducted by any such corporation or society now or hereafter existing, must, except where otherwise provided, inure to such corporation or society in aid of the purposes for which it was incorporated or organized.

Members May Become Peace Officers.

C. C. Sec. 607f. All members and agents, and all officers of each or any of such corporations or societies, as may by the trustees thereof be duly authorized in writing, approved by a judge of the superior court of the county in which such corporation or society was organized, and sworn in the same manner as are constables or peace officers, have power lawfully to interfere to prevent the perpetration of any act of cruelty upon any child or dumb animal, and may use such force as is necessary to prevent the same, and to that end may summon to their aid any bystander; they

may make arrests for the violation of any penal law relating to or affecting children or animals in the same manner as a constable or other peace officer; and may carry the same or similar weapons that such officers are authorized to carry. All such members and agents must, when making such arrests, exhibit and expose a suitable badge to be adopted by such corporation or society. All persons resisting such specially appointed officers, when performing any duty under this section, are guilty of a misdemeanor.

Proceedings Against Minors.

C. C. Sec. 607g. Any child under the age of sixteen years that comes within any of the following descriptions named:

1. Who is found begging or receiving or gathering alms (whether actually begging, or under the pretext of selling or offering for sale anything), or being in any street, road, or public place for the purpose of so begging, gathering, or receiving alms;

2. Who is found wandering and not having any home or settled place of abode, or proper guardianship, or visible means of subsistence;

3. Who is found destitute, either being an orphan, or having a vicious parent who is undergoing penal servitude or imprisonment;

4. Who frequents the company of reputed thieves or prostitutes, or houses of prostitution or assignation, or dance houses, concert saloons, theaters, or variety halls, or other places of amusement where spirituous, malt, or vinous liquors are sold, without parent or guardian;

5. Who is engaged or used for or in any business, exhibition, vocation, or purpose, in violation of any law of this state;

—must be arrested and brought before a court or magistrate, and when, upon examination before such court or magistrate, it appears that any such child has been engaged in any of the aforesaid acts, or comes within any of the aforesaid

descriptions; or when, upon the examination or conviction of any person having the custody of a child, of a criminal assault upon it, the court or magistrate before whom such examination or conviction is had deems it desirable for the welfare of such child that the person so examined or convicted should be deprived of its custody thereafter; such court or magistrate, when it deems it expedient for the welfare of such child, may commit such child to an orphan asylum, corporation, or society for the prevention of cruelty to children, charitable or other institution, or make such other disposition thereof as now or hereafter may be provided by law in cases of vagrant, truant, disorderly, pauper, or destitute children. Any corporation, organized under this title, or now existing, for the prevention of cruelty to children, or any officer or member thereof, may institute proceedings under this section for the welfare of any such child.

Directors—How Elected.

Civil Code 307, p. 419, *supra*.

Street Railroad Corporations.

Franchises for Grading Purposes.

How Created and Operated.

Road—When to be Commenced and Completed.

License for Each Car.

Franchise—How Obtained.

Franchise—Conditions it Must Contain.

Rates of Fare.

Penalty for Collecting Excessive Fare.

Two Companies May Use Same Track—How Far.

Crossings.

Powers of Cities and Towns to Regulate Street Railroads.

Passenger Tickets—When Must be Furnished.

Penalty for Excessive Fare—How Collected.

Right of City or Town to Alter Grade.

Franchises for Grading Purposes.

C. C. Sec. 509. The right to lay down a track for grading purposes, and maintain the same for a period not to exceed three years, may be granted by the corporate authorities of any city or town, or city and county, or supervisors of any city or county, but no such track must remain more than three years upon any one street; and it must be laid level with the street, and must be operated under such restrictions as not to interfere with the use of the street by the public. The corporate authorities of any city or town, or city and county, may grant the right to use steam or any other motive power in propelling the cars used on such grading track, when public convenience or utility demands it, but the reasons therefor must be set forth in the ordinance, and the

right to rescind the ordinance at any time reserved.

How Created and Operated.

C. C. Sec. 510. Street railroads are governed by the provisions of title III of this part [Sec. 454-491 C. C.], so far as they are applicable, unless such railroads are specially excepted.

Road—When to be Commenced and Completed.

C. C. Sec. 502. Work to construct the railroad must be commenced in good faith within not more than one year from the date of the taking effect of the ordinance granting the right of way, and said work must be completed within not more than three years after the taking effect of such ordinance; provided, that the governing body of such municipal corporation at the time of granting said right of way, shall have the power to fix the time for either the commencing or completion or both, of said work; not, however, to a time less than six months for commencing, and not less than eighteen months for completing the same. A failure to comply with either of the foregoing provisions of this section, or with either of the provisions of the ordinance granting said right of way, works a forfeiture of the right of way, and also of the franchise, unless the uncompleted portion is abandoned by the person or corporation to whom said right of way is granted, with the consent of the authorities granting the right of way, such abandonment and consent to be in writing. The authority granting the right of way shall have the power to grant an extension of time for the completion of said work, if it appear that the work has been commenced within the time fixed, and prosecuted in good faith; but no extension of time shall be granted for the commencement of said work, and shall not be granted for more than one year for the completion of the same. All extensions of time shall be in writing, and made a matter of record in the municipal-

ity. Provided, further, that this act shall not in any way affect any franchise or right of way granted before its passage.

License for Each Car.

C. C. Sec. 508. Each street railroad corporation must pay to the authorities of the city, town, county, or city and county, as a license upon each car, such sum as the authorities may fix, not exceeding fifty dollars per annum in the city of San Francisco, nor more than twenty-five dollars per annum in other cities or towns. Where any street railroad connects or runs through two or more cities or towns, a proportionate or equal share of such license tax must be paid to each of the cities or towns; and no such license tax is due the county authorities where the same is paid to any city or town authority.

Franchise—How Obtained.

C. C. Sec. 497. Authority to lay railroad tracks through the streets and public highways of any incorporated city, city and county, or town, or from any point in, or at the exterior boundary of such city, city and county, or town, to, in, or through any public park owned by such city, city and county, or town, outside of such city, city and county, or town, may be obtained for a term of years not exceeding fifty, from the trustees, council, or other body to whom is intrusted the government of the city, city and county, or town, under such restrictions and limitations, and upon such terms and payment of license tax, as the city, city and county, or town authority may provide. In no case must permission be granted to propel cars upon such tracks otherwise than by electricity, compressed air, horses, mules, or by wire ropes running under the streets and moved by stationary engines, unless for special reasons in this title hereinafter mentioned. Such board or body in granting the right, or at any time after the same is granted, to use electricity or any

other of said modes, has power to impose such terms, restrictions, and limitations as to the use of streets and the construction and mode of operating such electric and other roads as may, by such board or body, be deemed for the public safety or welfare. It is unlawful to grant any franchise mentioned in this section, or to extend the time for the construction or operation of any street railroad, within ninety days next preceding the day of holding a general election, or within seventy days next immediately following, including the day of holding such general election; and any franchise or extension so granted is void.

Franchise—Conditions it Must Contain.

C. C. Sec. 498. The city or town authorities, in granting the right of way to street railroad corporations, in addition to the restrictions which they are authorized to impose, must require a strict compliance with the following conditions, except in the case of prismoidal or other elevated railways: First, to construct their tracks on those portions of streets designated in the ordinance granting the right, which must be, as nearly as possible, in the middle thereof; second, to plank, pave, or macadamize the entire length of the street used by their tracks, between the rails, and for two feet on each side thereof, and between the tracks, if there is more than one, and to keep the same constantly in repair, flush with the street, and with good crossings; third, that the tracks must not be more than five feet wide within the rails, and must have a space between them sufficient to allow the cars to pass each other freely. In case of prismoidal and other elevated railways the railway must be required to be constructed in such manner as will present the least obstruction to the freedom of the streets in which it is erected. Every right or franchise for a street railway granted under the provisions of this title is subject to the condition that the person or corporation to whom the same is

granted must and will permit mail-carriers in the employ of the United States government, at all times, while engaged in the actual discharge of duty, to ride on the cars of such railroad free of charge.

Rates of Fare.

C. C. Sec. 501. The rates of fare on the cars must not exceed ten cents for one fare for any distance under three miles, and in municipal corporations of the first class must not exceed five cents for each passenger per trip of any distance in one direction, either going or coming, along any part of the whole length of the road or its connections. The cars must be of the most approved construction for the comfort and convenience of passengers, and provided with brakes to stop the same, when required. A violation of the provisions of this section subjects the corporation to a fine of one hundred dollars for each offense.

Penalty for Collecting Excessive Fare.

C. C. Sec. 504. Every violation of the provisions of section five hundred and one, subjects the owner or owners of the street railroad violating the same to a forfeiture, to the person unlawfully charged or paying more than is herein allowed to be charged, of the sum of two hundred and fifty dollars for each and every instance in which such unlawful charge is made or collected, to be recovered by suit in any court of competent jurisdiction. Such cause of action is assignable to one having a like cause of action in his own right against the same defendant, and an action may be maintained by the assignee in his own name, and several such causes of action can be vested in such assignee and united in the same action.

Two Companies May Use Same Track—How Far.

C. C. Sec. 449. Two lines of street railway, operated under different managements, may be permitted to use the same street, each paying

an equal portion for the construction of the tracks and appurtenances used by said railways jointly; but in no case must two lines of street railway, operated under different managements, occupy and use the same street or tracks for a distance of more than five blocks consecutively.

Crossings.

C. C. Sec. 500. Any proposed railroad track may be permitted to cross any track already constructed, the crossing being made as provided in chapter II, title III, of this part. In laying down the track and preparing therefor, not more than one block must be obstructed at any one time, nor for a longer period than ten working days. [Secs. 465-478 C. C.]

Power of Cities and Towns to Regulate Street Railroads.

C. C. Sec. 503. Cities and towns in or through which street railroads run may make such further regulations for the government of such street railroads as may be necessary to a full enjoyment of the franchise and the enforcement of the conditions provided herein.

Passenger Tickets—When Must be Furnished.

C. C. Sec. 505. Every street railroad corporation must provide, and, on request, furnish to all persons desiring a passage on its cars, any required quantity of passenger tickets or checks, each to be good for one ride. Any corporation failing to provide and furnish tickets or checks to any person desiring to purchase the same at not exceeding the rate hereinbefore prescribed, shall forfeit to such person the sum of two hundred dollars, to be recovered as provided in the preceding section, provided, that the provisions of this section shall not apply to such street railroad corporations as charge but five cents fare.

Penalty for Excessive Fare—How Collected.

C. C. Sec. 506. Upon the trial of an action for any of the sums forfeited, as provided in the two

preceding sections, proof that the person demanding or receiving the money as fare, or for the sale of the ticket or check, was, at the time of making the demand or receiving the money, engaged in an office of the corporation, or vehicle belonging to the corporation, shall be prima facie evidence that such person was the agent, servant, or employe of the corporation, to receive the money or give the ticket or check mentioned.

Right of City or County to Alter Grades.

C. C. Sec. 507. In every grant to construct street railroads, the right to grade, sewer, pave, macadamize, or otherwise improve, alter, or repair, the streets or highways, is reserved to the municipality and cannot be alienated or impaired; such work to be done so as to obstruct the railroad as little as possible; and, if required, the owner of such railroad must shift its rails so as to avoid the obstructions made thereby.

Telegraph and Telephone Companies.

Articles of Incorporation—What to Contain.
Power to Alienate Franchises.
Right to Use Public Waters and Highways.
Penalty for Injuries to Corporate Property.
Monuments at Subaqueous Cable Crossings.
Conduct of Business.

Articles of Incorporation—What to Contain.

Civil Code 291, p. 548, *supra*.
Civil Code 293, p. 548, *supra*.
Civil Code 294, p. 548, *supra*.
Civil Code 295, p. 549, *supra*.

Power to Alienate Franchises.

C. C. Sec. 540. Any telegraph or telephone corporation may at any time, with the consent of the persons holding two thirds of the issued stock of the corporation, sell, lease, assign, transfer, or convey any rights, privileges, franchises, or property of the corporation, except its corporate franchise.

Right to Use Public Waters and Highways.

C. C. Sec. 536. Telegraph corporations may construct lines of telegraph along and upon any public road or highway, along or across any of the waters or lands within this state, and may erect poles, posts, piers, or abutments for supporting the insulators, wires, and other necessary fixtures of their lines, in such manner and at such points as not to incommode the public use of the road or highway, or interrupt the navigation of the waters.

Penalty for Injuries to Corporate Property.

C. C. Sec. 537. Any person who injures or destroys, through want of proper care, any necessary or useful fixture of any telegraph or telephone corporation, is liable to the corporation for all damages sustained thereby. Any vessel which, by dragging its anchor, or otherwise, breaks, injures, or destroys the subaqueous cable of a telegraph or telephone corporation, subjects its owner to the damages hereinbefore specified.

C. C. Sec. 538. Any person who willfully and maliciously does any injury to any telegraph or telephone property, mentioned in the preceding section, is liable to the corporation for one hundred times the amount of actual damages sustained thereby, to be recovered in any court of competent jurisdiction.

Monuments at Subaqueous Cable Crossings.

C. C. Sec. 539. No telegraph or telephone corporation can recover damages for the breaking or injuring of any subaqueous telegraph or telephone cable, unless such corporation has previously erected on either bank of the waters under which the cable is placed, a monument, indicating the place where the cable lies, and publishes for one month in some newspaper most likely to give notice to navigators, a notice giving a description and the purpose of the monuments, and the general course, landings, and termini of the cable.

Conduct of Business.

C. C. Sec. 2207. A carrier of messages by telegraph or telephone must, if it is practicable, transmit every such message immediately upon its receipt. But if this is not practicable, and several messages accumulate upon his hands, he must transmit them in the following order:

1. Messages from public agents of the United States or of this state, on public business;
2. Messages giving information relating to the sickness or death of any person;

3. Messages intended in good faith for immediate publication in newspapers, and not for any secret use;

4. Other messages in the order in which they are received.

[See also Sections 2161, 2162 C. C.]

Water Corporations.

Franchise to Supply Municipalities—How Obtained.

Duties of Such Corporations.

Duties of Irrigation Companies.

Public Highways Not to be Unnecessarily Obstructed.

Powers of Irrigation Companies to Distribute the Corporate Property.

Water a Public Use—When.

Franchises to Supply Municipalities—How Obtained.

C. C. Sec. 548. No corporation formed to supply any city, city and county, or town with water must do so unless previously authorized by an ordinance of the authorities thereof, or unless it is done in conformity with a contract entered into between the city, city and county, or town and the corporation. Contracts so made are valid and binding law, but do not take from the city, city and county, or town the right to regulate the rates for water, nor must any exclusive right be granted. No contract or grant must be made for a term exceeding fifty years.

Duties of Such Corporations.

C. C. Sec. 549. All corporations formed to supply water to cities or towns must furnish pure fresh water to the inhabitants thereof, for family uses, so long as the supply permits, at reasonable rates and without distinction of persons, upon proper demand therefor; and must furnish water to the extent of their means, in case of fire or other great necessity, free of charge. The board of supervisors, or the proper city or town authorities, may prescribe proper rules relating to the

delivery of water, not inconsistent with the laws of the state.

Duties of Irrigation Companies.

C. C. Sec. 552. Whenever any corporation, organized under the laws of this state, furnishes water to irrigate lands which said corporation has sold, the right to the flow and use of said water is and shall remain a perpetual easement to the land so sold, at such rates and terms as may be established by said corporation in pursuance of law. And whenever any person who is cultivating land, on the line and within the flow of any ditch owned by such corporation, has been furnished water by it, with which to irrigate his land, such person shall be entitled to the continued use of said water, upon the same terms as those who have purchased their land of the corporation.

Must Not Unnecessarily Obstruct Public Highways.

Civil Code 551, p. 469, *supra*.

Powers of Irrigation Companies to Distribute the Corporate Property.

Civil Code 309, p. 416, *supra*.

Water a Public Use—When.

Const. Art. XIV, Section 1.

PART III.

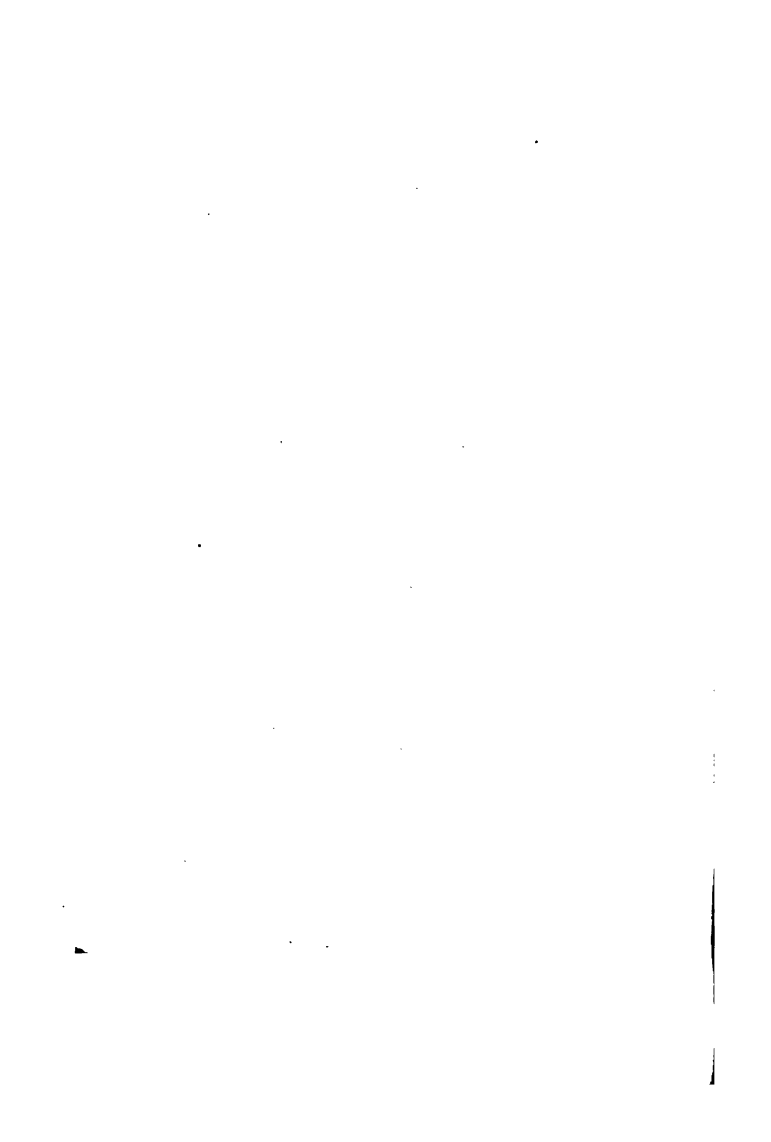
STATUTES

—OF—

Alaska, Arizona,
Nevada, Oregon
and Washington

RELATING TO

FOREIGN CORPORATIONS.



Alaska—Statutes Relating to Foreign Corporations.

Charter to be Filed—Resident-Agent to be Designated.

Effect of Designation.

New Agent to be Designated—When.

Penalty.

Annual Reports.

Corporations Heretofore in Business in Alaska. Jurisdiction.

Summons—How Served.

Service by Publication.

Insurance Companies—Certificate to be Filed.

Service of Process on.

To Whom Above Provisions Apply.

Penalty for Violation.

Fees for Filing.

Charter to be Filed—Resident-Agent to be Designated.

Alaska C. C. Sec. 225. All corporations or joint stock companies organized under the laws of the United States, or the laws of any state or territory of the United States, shall, before doing business within the district, file in the office of the secretary of the district and in the office of the clerk of the district court for the division wherein they intend to carry on business, a duly authenticated copy of their charter or articles of incorporation, and also a statement, verified by the oath of the president and secretary of such corporation, and attested by a majority of its board of directors, showing—

(1) The name of such corporation and the location of its principal office or place of business without the district; and, if it is to have any place

of business or principal office within the district, the location thereof;

(2) The amount of capital stock;

(3) The amount of its capital stock actually paid in in money;

(4) The amount of its capital stock paid in in any other way, and in what;

(5) The amount of the assets of the corporation, and of what the assets consist, with the actual cash value thereof;

(6) The liabilities of such corporation, and if any of its indebtedness is secured, how secured, and upon what property.

Such corporation or joint stock company shall also file, at the same time and in the same offices, a certificate, under the seal of the corporation and the signature of its president, vice-president, or other acting head, and its secretary, if there be one, certifying that the corporation has consented to be sued in the courts of the district upon all causes of action arising against it in the district, and that service of process may be made upon some person, a resident of the district, whose name and place of residence shall be designated in such certificate, and such service, when so made upon such agent, shall be valid service on the corporation or company, and such agent shall reside at the principal place of business of such corporation or company in the district.

Effect of Designation.

Alaska C. C. Sec. 226. The written consent of the person so designated to act as such agent shall also be filed in like manner, and such designation shall remain in force until the filing in the same offices of a written revocation thereof, or of the consent, executed in like manner. A certified copy of the designation so filed, accompanied with a certificate that it has not been revoked, is presumptive evidence of the execu-

tion thereof, and conclusive evidence of the authority of the officer executing it.

New Agent to be Designated—When.

Alaska C. C. Sec. 227. In case of the death, removal from the district, or disqualification of the person so designated, or of the revocation of his consent, it shall be the duty of the clerk of the district court to notify such corporation or company; and it shall be the duty of such corporation or company, within sixty days thereafter, to designate another person in the manner hereinbefore provided.

Penalty.

Alaska C. C. Sec. 228. If any such corporation or company shall attempt or commence to do business in the district without having first filed said statements, certificates, and consents required by this chapter, it shall forfeit the sum of twenty-five dollars for every day it shall so neglect to file the same; and every contract made by such corporation, or any agent or agents thereof, during the time it shall so neglect to file such statements, certificates, or consents, shall be voidable at the election of the other party thereto. It shall be the duty of the United States attorney for the district to sue for and recover, in the name of the United States, the penalty above provided, and the same, when so recovered, shall be paid into the treasury of the United States. /

Annual Reports.

Alaska C. C. Sec. 229. Every such corporation or company shall annually, and within thirty days from the first day of July of each year, make a report, which shall be in the same form and contain the same information as required in the statement mentioned in section two hundred and twenty-five, of this chapter, which report shall be filed in the office of the secretary of the district, and a duplicate thereof in the office of the

clerk of the district court for the division wherein the business of the corporation is carried on.

Corporations Heretofore in Business in Alaska.

Alaska C. C. Sec. 230. Any such corporation or company that has heretofore engaged in business, performed acts, or made contracts in the district, may, within ninety days from the time this act goes into effect, comply with the provisions hereof, and thereupon all its acts and contracts done and made before this act goes into effect shall be valid and enforceable.

Alaska C. C. Sec. 231. If any such corporation or company shall fail to comply with any of the provisions of this chapter, all its contracts with citizens of the district shall be void as to the corporation or company, and no court of the district, or of the United States, shall enforce the same in favor of the corporation or company so failing.

Jurisdiction.

Alaska C. C. P. Sec. 485. No corporation is subject to the jurisdiction of the district court of the district unless it appear in the court, or have been created by or under the laws of the district, or have an agency established therein for the transaction of some portion of its business, or have property therein; and in the last case only to the extent of such property at the time the jurisdiction attached.

Summons—How Served.

Alaska C. C. P. Sec. 46. The summons shall be served by delivering a copy thereof, together with a copy of the complaint prepared and certified by the plaintiff, his agent, or attorney, or by the clerk of the court as follows:

First. If the action be against a private corporation, to the president or other head of the corporation, secretary, cashier, or managing agent, or, in case none of the officers of the corporation above named shall reside or have an

office in the district, then to any clerk or agent of such corporation who may reside or be found in the district, or if no such officer be found, then by leaving a copy thereof at the residence or usual place of abode of such clerk or agent; * * * * *

Services by Publication.

Alaska C. C. P. Sec. 47. When service of the summons cannot be made as prescribed in the last preceding section, and the defendant after due diligence cannot be found within the district, and when that fact appears by affidavit to the satisfaction of the court or judge thereof, or justice of the peace in an action in a justice's court, and it also appears that a cause of action exists against the defendant, or that he is a proper party to an action relating to real or personal property in the district, the court or judge thereof, or a justice of the peace in an action in a justice's court, shall grant an order that the service be made by publication of the summons in either of the following cases:

First. When the defendant is a foreign corporation, and has property within the district, or the cause of action arose therein; * * * * *

Insurance Companies—Certificate to be Filed.

Alaska C. C. Sec. 360. No company, corporation, or association, or firm, or individual shall be permitted to transact a life, fire, or marine insurance business in the district until he or it has filed in the office of the secretary of the district a certificate by the secretary of state or other proper officer of some state of the United States, setting forth that the said company, corporation, association, firm, or individual has been qualified to carry on the business of insurance in such state in accordance with the laws thereof.

Service of Process on.

Alaska C. C. Sec. 361. No insurance company, corporation, association, firm or individual shall

be permitted to transact a life, fire, or marine insurance business in the district until it shall have filed with the clerk of each division of the district court a power of attorney which shall set forth that such company is a corporation or duly organized insurer (naming the principal place of business of the company and principal place of business for the Pacific coast), which power of attorney shall authorize a citizen and resident of the district to receive and accept service in any proceeding in a court of justice of the district. If any attorney of any insurance company appointed under the provisions of this section shall remove from the district or become disqualified in any manner from accepting service, and if any citizen or resident of the district shall have any claim by virtue of any insurance policy issued by any such company not represented by attorney in the district, valid service may be made on such company by service on the clerk of the district court or any division thereof provided, in such case the clerk of the district court shall immediately notify such company and the principal agent for the Pacific coast, inclosing a copy of the service by mail, postpaid; and provided further, in such case no proceedings shall be had within sixty days after such service on the clerk.

To Whom Above Provisions Apply.

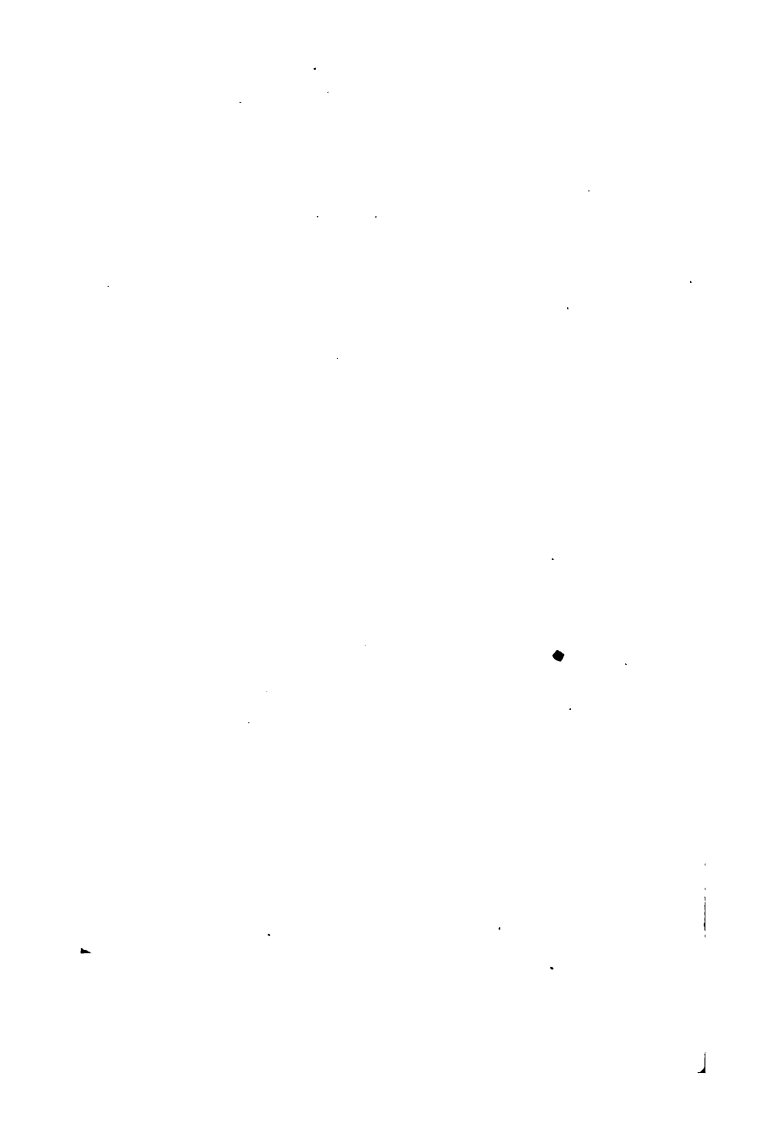
Alaska C. C. Sec. 363. The provisions of this chapter, under either term or designation of company, corporation, association, firm, or individual in either case, where either term or designation is used, shall apply to any insurer, company, corporation, association, firm, or individual engaged as insurers or who may hereafter engage as insurers in the district, or who may engage in offering or affording indemnity against the casualties of fire or life.

Penalty for Violation.

Alaska C. C. Sec. 364. Any officer, agent, or employee of any insurance company or other person violating any of the provisions of this chapter shall be fined not less than one hundred nor more than five hundred dollars, and in default of payment of such fine shall be imprisoned not less than ten days nor more than six months.

Fees for Filing.

Alaska C. C. Sec. 365. The secretary of the district shall collect from each company or person for the service provided in this chapter the following fees: For filing certificate of qualification, five dollars; for filing power of attorney, five dollars; and the secretary shall account for the same in the manner provided by law in the case of other fees collected or received by them.



Arizona—Statutes Relating to Foreign Corporations.

Articles to be Filed—Resident Agent to be Designated.

Penalties for Frauds in Management of Corporations.

Service of Summons Upon.

Building and Loan Societies—Bonds.

Insurance Companies.

Articles to be Filed.—Resident Agent to be Designated.

An act to revise and codify the laws of Arizona.

[In effect Sept. 1, 1901.]

TITLE 12.—CORPORATIONS.

CHAPTER NINE—FOREIGN CORPORATIONS.

Sec. 149. Any company incorporated under the laws of any other state, territory or foreign country which shall carry on any business, enterprise or occupation in this territory shall, before entering upon, doing or transacting such business, enterprise or occupation in this territory, file a certified and duly authenticated copy of its articles of incorporation or charter and the appointment of an agent as hereinafter specified with the secretary of the territory and the county recorder in each county in this territory in which such business, enterprise or occupation is to be carried on, and shall publish at least six times in some newspaper published in each of the counties in this territory in which such business, enterprise or occupation is to be carried on, a copy of its articles of incorporation, and upon the expiration thereof, file an affidavit in the office of

the secretary of the territory stating that such publication has been made according to law. This section, however, shall not apply to insurance corporations.

Sec. 150. Any such foreign corporation shall, in writing, over the hand of its president or other chief officer, attested by its secretary or by a resolution of its board of directors, appoint a resident agent in each county in this territory in which such corporation proposes to carry on any business, enterprise or occupation. All such agents shall be actual and bona fide residents of the county for which they are appointed, and of the territory for at least three years, and the full name and residence of each shall be stated in the writing appointing them.

Sec. 151. No corporation such as is mentioned in section 149 of this title shall transact any business whatsoever in this territory until and unless it shall have first filed its articles of incorporation and appointment of an agent as required in the two preceding sections, and every act done by it prior to the filing thereof shall be utterly void.

Sec. 152. Should any agent so appointed absent himself from the county in which his appointment is filed for a period of three months consecutively, and no other agent be appointed for said corporation within four months after the commencement of such absence of such agent, the right to transact business by the corporation represented by such agent shall cease, and all acts or contracts performed or made thereafter shall, at the option of any person interested, be declared null and void.

Sec. 153. Upon complying with the provisions of this chapter any association, company or corporation organized or incorporated under the laws of any other state or territory, or any foreign country, shall be qualified and competent to take, receive and acquire, either by purchase or by operation of law, and possess, own, hold

and dispose of any and all kinds of real and personal property within this territory, and to prosecute and defend and to appear, especially and generally, in any action in any court of or within this territory, and shall have, hold and enjoy, except as hereinafter provided, the same rights and privileges as are now held and enjoyed, or that may be hereafter held and enjoyed by any association, company or corporation organized or incorporated under the laws of this territory; provided, no association, company or corporation organized or incorporated under the laws of any foreign country, shall take, receive, acquire, possess, hold or own, at any one time, more than three hundred and twenty acres of real estate, exclusive of mines and mineral lands and land necessary or convenient for milling, smelting, reducing or working ores, or for manufacturing or commercial purposes.

Penalties for Frauds in Management of Corporations.

Pen. C. Sec. 889. It is no defense to a prosecution for a violation of the provisions of this chapter that the corporation was one created by the laws of another territory, state, government or country, if it was one carrying on business or keeping an office therefor within this territory.

Service of Summons Upon.

No. 19—An act to amend paragraph 704, of Section 56, Title XV, Chapter 6, of the Revised Statutes of Arizona territory, relating to the service of summons.

Be it enacted by the legislative assembly of the territory of Arizona:

In suits against any corporation, incorporated under the laws of this territory, or joint stock association, the summons may be served upon the president, secretary or treasurer of such corporation or joint stock association, or by leaving a copy of the same at the principal office thereof

during office hours; and in suits against any corporation incorporated under the laws of any other state or territory and doing business in this territory, or having property therein, but having no legally appointed and constituted agent residing therein for the purpose of receiving service of process, service of summons may be had upon the superintendent, managing agent or other person having charge or control of the business or property of such corporation in the territory or, service of such summons may be made by publication as prescribed in paragraph 712, section 64 of said title and chapter. In case there is a legally appointed and constituted agent of such corporation residing in the territory for the purpose of receiving service of process, the summons must be served upon such agent. Service may be had upon any railroad, telegraph or express company doing business in the territory by serving the summons upon any agent of such company, who resides in or may be found in the county where suit is brought.

Sec. 2. All acts and parts of acts in conflict with this act are hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its passage.

Approved this sixteenth day of March, A. D. 1897. [Stats. 1897 p. 53.]

Building and Loan Societies—Bonds.

No. 8.—An act requiring foreign building and loan corporations, companies and associations to give bonds for the security and protection of stockholders in the territory of Arizona.

Be it enacted by the legislature of the territory of Arizona:

Section 1. That hereafter no building and loan corporation, company or association organized under the laws of this or any other state, territory or foreign country shall be permitted to do or transact any kind of building and loan business in this territory, until such corporation, company

or association, in addition to other requirements of law, shall have made, executed and deposited with the territorial treasurer a good and sufficient bond, with two or more sureties, in the sum of fifteen thousand dollars, for the benefit and security of its stockholders residing in this territory.

Sec. 2. The bond mentioned in section 1 of this act must be in form joint and several, payable to the territory of Arizona and signed by the president, secretary, treasurer or managing agent of such corporation, company or association, and at least two sureties; conditioned that in cases wherein judgment has been rendered against such corporation, company or association, and a supersedeas bond on appeal has not been given by the principal, as required by law, or in case the supersedeas bond should for any cause fail or become insufficient, that the principal, within thirty days after such failure or rendition of any judgment against it, or them, as the case may be, pay or cause to be paid, all such judgments (not exceeding fifteen thousand dollars) recovered against it, or them, as the case may be, in any court of competent jurisdiction in this territory, or any liability incurred by virtue of any of its stock.

Sec. 3. Every such bond shall be in force and binding on the principal and sureties, for the faithful compliance of the principal with the requirements of this act, and for the use and benefit of any and all persons, corporations, companies, and associations, who may have any judgment against the principal; and in cases where a supersedeas bond on appeal has not been given, as required by law, and any person, corporation, company or association, who may have any such judgment against the principal recovered on a certificate of stock and a supersedeas bond has not been given, may, thirty days after the entry of such judgment, bring suit on such bond, in

his or its name, as the case may be, without an assignment thereof, in any court of competent jurisdiction in this territory.

Sec. 4. No bond mentioned in this act shall be void on account of the first recovery thereon; but suits may afterwards be brought on said bond from time to time by any person, corporation, company or association aggrieved, and who come under the provisions of this act, and recover judgment thereon, until the whole penalty of the bond shall be exhausted.

Sec. 5. The sureties on the bond must severally justify before an officer authorized to administer oaths, as follows: That he is a resident and freeholder or householder within this territory and is worth the amount for which he becomes surety, over and above all his just debts and liabilities, in property situated within this territory, exclusive of property exempt from execution and forced sale.

Sec. 6. The sureties may become severally liable for portions of not less than one thousand dollars, making in the aggregate at least two sureties for the whole amount of the bond.

Sec. 7. It shall be the duty of the territorial treasurer to approve all such bonds and when in his judgment any bond made under the provisions of this act, or the sureties thereon, for any cause becomes insufficient, to require the principal to furnish a new bond.

Sec. 8. Such building and loan corporation, company or association may in lieu of the bond mentioned in section one of this act, deposit with the territorial treasurer, territorial funding bonds, or some other interest-bearing valid bonds, of the territory of Arizona, or any of the counties thereof, or any of their first mortgages—or give security through any reliable security company—to the amount of fifteen thousand dollars, to be held in trust for the benefit of local stockholders of said building and loan corporation, company

or association.

The territorial treasurer must, upon receipt of such securities, forthwith deposit the same in the territorial treasury, in a package marked with the name of the corporation, company or association from whom received, where said securities must remain as security for stockholders of the corporation, company or association to which they respectively belong; but so long as the corporation, company or association remains solvent, he must permit such corporation, company or association to collect the interests or dividends on the securities so deposited, and may from time to time withdraw any of said securities, on depositing the value thereof in money or other securities of the same kind and value as those mentioned in this act, instead of those withdrawn.

Sec. 9. If for any cause the securities should at any time, in the judgment of the territorial treasurer, become insufficient, he may require such corporation, company or association to deposit additional securities to make up the full amount of fifteen thousand dollars.

Sec. 10. Any corporation, company or association mentioned in this act, desiring to suspend business and withdraw the securities so deposited, must furnish the territorial treasurer with satisfactory proof that all certificates of stock have been called in and satisfactorily settled and adjusted, and that there are no suits pending against it or them, and that there are no unsatisfied judgments against it or them, as the case may be.

Sec. 11. Any judgment creditor who may have unsatisfied judgment recovered on a certificate of stock against such corporation, company or association, and a supersedeas bond on appeal has not been given as required by law, may within thirty days from the date of said judgment have execution and levy on sufficient of said securities to satisfy said judgment.

Sec. 12. Any person or agent or otherwise who

shall solicit investments or issue or deliver any certificate of stock in this territory for or on account of any foreign building and loan corporation, company or association, which has not complied with the provisions of this act, shall be guilty of a misdemeanor, and on conviction thereof shall be punished by a fine not exceeding two hundred dollars nor less than fifty dollars or by imprisonment in a county jail not exceeding three months.

Sec. 13. This act shall take effect and be in force from and after its passage.

Approved this fourth day of March, A. D. 1897.
[Stats. 1897, p. 35.]

Insurance Companies.

Rev. Stat. Sec. 257. (Sec. 7.) It shall not be lawful for any agent of any insurance company not incorporated under the laws of this territory to transact the business of insurance within this territory unless the insurance company shall have first obtained a certificate of authority from the territorial treasurer, which certificate shall be issued to such agent upon his filing with said treasurer a statement under oath showing:—

First. The name and locality of the company.

Second. The amount of capital stock.

Third. The capital stock paid up.

Fourth. The amount of its accumulation and assets and liabilities.

Fifth. Surplus as to policy holders.

Together with a written agreement under seal of the company, signed by the president and secretary thereof, and agreeing on the part of the company that service or process in any civil action against such company may be made upon any agent of the company in the territory, and authorizing such agent for and in behalf of such company to admit service of process on him, and agreeing that the service of process upon any such agent shall be valid and binding upon the

company as if made upon the president or secretary thereof.

Rev. Stat. Sec. 258. (Sec. 8.) The statement referred to in section seven of this chapter shall be renewed annually in the month of March of each year. The first statement may be made any time.

Rev. Stat. Sec. 259. (Sec. 9.) Upon filing said renewed statement the agent shall also file therewith a statement under oath of the sum total of the premium receipts collected within the territory for the period elapsing since the filing of the previous statement, and shall cause such statement to be published in at least one newspaper published within the territory, and thereupon the treasurer shall levy a tax of one and one-half per cent. upon said premium receipts, which shall be paid by said agent to said treasurer before said certificate of authority can issue, the said tax to go to the general fund of territory, and which said tax shall be payment in full of all demands for any tax on said premium receipts, or license for conducting such business of insurance.

Rev. Stat. Sec. 260. (Sec. 10.) Any person or firm in this territory who receives or receipts for any money on account of, or for any contract of insurance made by him or them, or for any such insurance company or individual aforesaid, or who receives or receipts for money from other persons to be transmitted to any such company or individual aforesaid, for a policy of insurance or any renewal thereof, although such policy of insurance is not signed by him or them, as agent or agents of such company, or who in any wise directly or indirectly makes, or causes to be made, any contract or contracts of insurance for or on account of such insurance company aforesaid, shall be deemed to all intents and purposes an agent or agents of such company, and

shall be subject and liable to all the provisions, regulations and penalties of this act.

Rev. Stat. Sec. 261. (Sec. 11.) The territorial treasurer shall be entitled to the following fees herein: For filing statement mentioned in section seven of this chapter, five dollars; for issuing certificate of authority, five dollars; for issuing each subsequent certificate of authority to other agents of same company, two dollars.

Rev. Stat. Sec. 262. (Sec. 12.) Any person violating the provisions of this act within this territory shall, upon conviction in any court of competent jurisdiction, be fined in any sum not exceeding one thousand dollars.

Nevada—Statutes Relating to Foreign Corporations.

Annual Statements to be Published.

Certificate to be Filed.

Penalty.

Agent to Reside in the State.

Serving of Process.

When no Agent, Service—How Made.

Insurance Companies.

Same—Capital Required.

Same—Penalty.

Same—Deposit Required.

Same—License.

Same—Annual Statements.

Same—Penalty.

Surety Companies.

Electric Power Companies.

Mining Companies—Power to Consolidate.

Railroad Companies.

Service by Publication on Foreign Corporations.

Foreign Corporations—Must Publish Statements.

An act requiring foreign corporations doing business in the state of Nevada to publish annual statements. (Approved March 28, 1901.)

The people of the state of Nevada, represented in senate and assembly, do enact as follows:

Section 1. All foreign corporations doing business in the state of Nevada shall during the month of May of this year and in each succeeding year in the month of January, publish a statement of their last year's business in some daily newspaper in the state of Nevada for a period of one week.

Sec. 2. The secretary of the company publish-

ing the statement shall file a copy with the several assessors of the state of Nevada.

Sec. 3. Any corporation coming within the provisions of this act who shall refuse or neglect to file a statement as required by section one of this act, shall be liable to a penalty of \$100 for each month that the published statement remains unfiled with the several assessors of the state.

Sec. 4. Any district attorney in the state is competent to sue to recover the penalty, or the attorney-general. The first county suing through its district attorney shall secure the penalty, and if no suit is brought for the penalty by any district attorney the state shall have the right to recover through its attorney-general.

Sec. 5. All acts and parts of acts in conflict with this act is hereby repealed.

Every Company Incorporated in any other State Must File Certificate—May be Introduced in Evidence.

Compiled Laws Sec. 897. (Section 1.) Every incorporated company or association created and existing under the laws of any other state, or of any foreign government, shall file in the office of the county recorder of each county in this state, wherein such corporation is engaged in carrying on business of any character, a properly authenticated copy of their certificate of incorporation, or of the act of law by which such corporation was created, with a proper certificate of the officers of the corporation as to the genuineness of the same; and to each of such certificates shall be appended a duly certified list of the officers of such corporation, which said list, with the proper supplemental certificate, shall be corrected as often as a change in such officers occurs; and a copy of such certificate, duly certified to by the county recorder wherein such certificate is filed, may be introduced in evidence to

prove the fact of the existence of such corporation, without further proof.

Penalty for Failure to Comply—Proviso.

C. L. Sec. 898. (Sec. 2.) Any person or persons who shall act as the managing agent or superintendent of any such corporation, in conducting or carrying on any business of such corporation, in any of the counties of this state, without any such certificate having been filed as required by section one of this act, shall be deemed guilty of a misdemeanor, and on conviction shall be fined not less than fifty nor more than five hundred dollars, to which may be added imprisonment in the county jail for any period not exceeding six months; provided, that in all actions against such corporations, associations or companies which have neglected to file the proper certificate or act of their incorporation, as heretofore provided, it shall be sufficient to establish the legal existence of such corporation by the proof of their acting as such.

Agent to Reside in the State.

C. L. Sec. 899. (Section 1.) Every incorporated company or association created and existing under the laws of any other state, or territory, or foreign government, or the government of the United States, owning property or doing business in this state, shall appoint and keep in this state an agent upon whom all legal process may be served for such corporation or association. Such corporation shall file a certificate, properly authenticated by the proper officers of such company, with the secretary of state, specifying the full name and residence of such agent, which certificate shall be renewed by such company as often as a change may be made in such appointment, or vacancy shall occur in such agency.

Serving of Process.

C. L. Sec. 900. (Sec. 2.) Any and all legal process may be served upon such company, by

delivering to such agent personally, a copy of such process, which shall be legal and valid.

When No Agent, Service to be Made on Secretary of State.

C. L. Sec. 901. (Sec. 3.) If any such company shall fail to appoint such agent, or fail to file such certificate for ninety days after the passage of this act, or for ten days after a vacancy occurs in such agency, then it shall be lawful to serve such company with any and all legal process by delivering a copy to the secretary of state, and such service shall be valid to all intents and purposes; provided, that in all cases of service under this act, the defendant shall have forty days in which to answer or plead. This act shall be as giving an additional mode and manner of serving process and not as affecting the validity of any service of process hereafter made, which would be valid under any statute now in force.

Insurance Companies Prohibited from Doing Business Without a Certificate.

C. L. Sec. 903. (Section 1.) No company, corporation, or association organized under the laws of this state, or any other state, or government, or firm, or individual, shall be permitted to transact an insurance business in this state, without a certificate from the state controller authorizing and permitting the transaction of such business.

Showings Required of Companies other than State Corporations—Service of Notice.

C. L. Sec. 910. (Sec. 8.) No insurance company organized outside the state of Nevada shall be permitted to do business in this state until it shows to the controller, by the reports of the insurance commissioner or insurance officer of some other state having an insurance department, or by a certificate of such insurance officer,

that it is possessed of a paid up, unimpaired cash capital of at least two hundred thousand dollars, nor until such company shall have filed with the controller a power of attorney which shall set forth that such company is a corporation or duly organized insurer (naming the principal place of business of the company and the principal place of business for the Pacific coast), which power of attorney shall authorize a citizen and resident of this state to make and accept service in any proceeding in any of the courts of justice of this state, or any of the United States courts herein. If any attorney of any insurance company, appointed under the provisions of this act, shall remove from the state or become disqualified in any manner from accepting service, and if any citizen or resident of this state shall have any claim by virtue of any insurance policy issued by any company not represented by attorney in this state, valid service may be made on such company by service upon the controller; provided, that in such case the controller shall immediately notify such company, and the principal agent for the Pacific coast, inclosing a copy of the service, by mail, postpaid; and, provided, further, that in such case no proceedings shall be had within forty days after such service on the controller.

Controller's Duties and Powers—Violations of Laws and Penalties.

C. L. Sec. 911. (Sec. 9.) Upon the written representation of three citizens, and the belief of the controller, that any company organized outside of this state and doing an insurance business in this state has less than two hundred thousand dollars paid up, unimpaired cash capital, it shall be the duty of the controller to make such investigation or require such proof as shall be satisfactory to him concerning the financial condition of such company; provided, however, the certificate of the insurance officer of any

state having an insurance department, that such company has a paid-up, unimpaired cash capital equal to two hundred thousand dollars in United States gold coin, shall be accepted by the controller as satisfactory. If such company does not, within sixty days after demand of the controller, produce such certificate, the controller shall revoke his certificate of authority to such company to do business in this state, and in the meantime may withdraw or withhold his certificate of authority until such certificate is produced. If, after such withholding, refusal, withdrawal or revocation, such company, or any officer, agent or other person, shall write, deliver or agree to deliver any policy in such company, such person so violating the provisions of this act shall be deemed guilty of a misdemeanor, and on conviction thereof shall be subject to the penalties provided in section five of this act.

Companies to Have Deposit.

C. L. Sec. 912. (Sec. 10.) No company not incorporated in the United States shall be permitted to transact an insurance business in this state, unless the same shall have deposited or invested for the benefit of its policy-holders in the United States, in at least one state, a sum equal to two hundred thousand dollars, in gold coin, in excess of its liabilities in the United States.

Conditions Precedent to Foreign Corporations— License Issued, When may be Revoked.

C. L. Sec. 948. (Sec. 7.) Corporations organized under the laws of any other state or country to transact the business of mutual assessment insurance, shall, as a condition precedent to transacting business in this state, deposit with the state controller a certified copy of its charter, or other instrument required by its home authorities, a statement under oath of its president or secretary of its business for the preceding

year, in such form as may be required by the state controller; a power of attorney which shall authorize a citizen and resident of this state to make and accept service in any proceeding in any of the courts of justice in this state, or any of the United States courts herein, as provided in section eight of "An act to license and regulate insurance business in this state," approved February 23, 1881; a certificate that for the next preceding twelve months it has paid, in full, the maximum amount named in its contracts of insurance; a certificate from the proper officer of its state or government that like corporations of this state are legally entitled to do business in such state or country; copies of its contracts of insurance and applications, which must show that the liabilities of its members are not limited to fixed premiums, and evidence satisfactory to the controller that the corporation has accumulated a fund equal to that required of like corporations of this state, constituting a reserve or surplus fund held in trust for the benefit of its contract holders, and so invested and held as required by the laws of the state or government under which such corporation was organized. The controller shall, thereupon, issue a license to such corporation to do business in this state, on payment of the license tax as provided in section thirteen of this act. This license shall be renewed annually, and may be revoked whenever it is ascertained that the statements required to be made by this section are not true. Upon such revocation, notice thereof shall be given by the controller by publication in some newspaper of general circulation published in the state, for two weeks, and no new contracts shall be made by such company in this state. When any other state or country imposes any additional license, fees, taxes, or penalties upon any corporation organized or doing business under this act, like license, fees, taxes or penalties shall be imposed

upon corporations of the same kind, and their agents, of such state or country doing business in this state.

An act requiring insurance companies to make annual statements to the state controller.

When Made—What to Show.

C. L. Sec. 958. (Section 1.) Every insurance company of whatever kind or character, and every mutual life or assessment association, except charitable secret societies issuing benefits to its own members only, shall annually, on or before the first day of March, file in the office of the state controller a statement, signed and sworn to by its president and secretary, which shall exhibit its financial condition on the thirty-first day of December of the previous year, and shall include a detailed statement of its assets and liabilities, the amount and character of its business transacted and moneys received and expended during that year, specifying particularly its business transacted in Nevada, and such other information as the state controller may deem necessary to elicit a complete and accurate exhibit of its condition and transactions, and in such form as he may prescribe. The annual statement of a company of a foreign country shall embrace only its business and condition in the United States, and shall be subscribed and sworn to by its resident manager or principal representative in charge of its American business. The transaction of any new business by any company, or its agents, after neglect to file a statement in the manner herein provided, shall be unlawful.

Failure to File Statement—False Statement.

C. L. Sec. 959. (Sec. 2.) Any company that neglects to make and file its annual statement in the form and within the time provided by section one, shall forfeit one hundred dollars for each day's neglect, and upon notice by the state con-

troller to that effect, its authority to do new business shall cease while such default continues. For willfully making a false annual or other statement it is required by law to make, an insurance company and the persons making oath to or subscribing the same, shall severally be punished by fine of not less than five hundred nor more than five thousand dollars. Any person making oath to such false statement shall be deemed guilty of the crime of perjury.

An act to facilitate the giving of bonds and undertakings required by law.

Surety Company May go on Bond, Conditions—Duties of Controller—Fees of Secretary of State.

C. L. Sec. 968. (Section 1.) Any company incorporated and organized under the laws of any state of the United States for the purpose of transacting business as surety on obligations of persons, or corporations, or state, county or township officers, and which has complied with all the requirements of the law regulating the admission of such companies to transact business in this state, may, upon production of evidence of solvency and credit satisfactory to the judge, head of department or other officer or officers authorized to approve such bond, be accepted as surety upon the bond of any person, or corporation, state, county or township officer required by the laws of the state to execute a bond, and if such surety company shall furnish satisfactory evidence of its ability to provide all the security required by law, no additional security may be exacted, but other surety may, in the discretion of the official or officials authorized to approve such bond, be required, and such surety company may be released from its liability on the same terms and conditions as are by law prescribed for the release of individuals, it being the true intent and meaning of this act to enable corporations created for that purpose to become surety

on bonds required, subject to all the rights and liabilities of private parties. No surety company not incorporated under authority of this state shall, directly or indirectly, take risks or transact business in this state until it shall have first appointed the state controller of this state to be the true and lawful attorney of such company, in and for this state, upon whom all lawful process may be served with the same effect as if the company existed in this state. Said power of attorney shall stipulate and agree on the part of the company that any lawful process against the company, which is served on said attorney, shall be of the same legal force and validity as if served on the company, and that the authority shall continue in force so long as any liability remains outstanding in this state. A certificate of such appointment shall be filed in the office of the secretary of state, and copies certified by him shall be received in evidence in all the courts of this state. Service of process in actions and proceedings upon such attorney shall be deemed service upon the principal, but such principal shall be allowed thirty days thereafter within which to appear and plead in all such actions and proceedings. Whenever any lawful process against a surety company shall be served upon the state controller he shall forthwith forward a copy of the process served upon him, by mail, postpaid, and directed to the secretary of the company. For each copy of the process the secretary of state shall collect the sum of five dollars, which shall be paid by the plaintiff at the time of such service, the same to be recovered by him as a part of the taxable costs if he prevail in the suit.

Foreign Corporations Supplying Electric Power.

Section 1. The right is hereby granted to any person or corporation incorporated under the laws of this state, or under the laws of any other state but doing business in this

state after compliance with the laws of this state concerning foreign corporations, to supply electric power, heat and light to the inhabitants of the counties, cities and counties, cities, and towns of this state and that to carry out said purpose, the right is hereby granted to such persons or corporations to construct and maintain poles and wires on the county roads and highways and in the streets of said cities, cities and counties, cities, and towns of this state, together with all the necessary appurtenances, and to conduct electricity over said wires and appurtenances, to any part of said towns, cities, cities and counties, and counties, for the purpose of furnishing electric power, heat and light; provided, that said poles shall not be so placed upon said roads, highways or streets, as to impede travel thereon, and shall not be less than forty-five feet above the ground in cities and towns, but shall be placed as nearly to the sides of said roads, highways, and streets as is possible consistent with the uses of the poles.

Relating to Electric Poles.

Sec. 2. Such persons or corporations shall keep their plants, poles, wires and necessary appurtenances in good repair so as not to interfere with the passage of persons or vehicles or the safety of persons or property.

Modern Construction.

Sec. 3. The appurtenances of said plants shall be of the most approved construction for the comfort and convenience of the inhabitants of said counties, cities, and counties, cities, and towns of the state.

Penalty for Injuries To.

Sec. 4. Any person willfully obstructing, hindering, or damaging said plant, poles, wires or appurtenances shall be guilty of a misdemeanor and shall be punished according to the laws of the state of Nevada in such cases made and provided.

The Franchise.

Sec. 5. The franchise and privilege hereby granted shall continue for the period of twenty-five years from and after the date of filing a notice of intention on behalf of such person or corporation to supply such electric power, heat and light to said inhabitants, in the office of the county recorder of the county in which such person or corporation intends to supply said electric power, heat and light accompanied by an agreement on behalf of such person or corporation that he or it will annually pay to such county, city and county, city, or town, two per cent of the net profits made in furnishing said electric power, heat or light; provided, that such person or corporation shall commence the construction of their plant or pole lines or necessary appliances within three months after filing said notice of intention and agreement and continue the same to completion with reasonable diligence; and, provided further, that an affidavit sworn to by such person or by the president or secretary of such corporation containing a full statement as to the receipts and expenditures of said person or corporation in the furnishing of said electric power, heat and light, for the twelve months next preceding, be annually filed in the office of said county recorder.

[Act. of March 2, 1901, Stats. p. 35 Chap. 25.]

Foreign Corporations May Consolidate with Home Corporations—Agent to be Appointed, When—Penalty.

C. L. Sec. 262. (Sec. 3.) The provisions of this act shall be construed to permit and allow foreign corporations, owning mining property in this state, to consolidate with corporations organized under the laws of this state; provided, that in all such cases the principal place of business of such consolidation, when effected, shall be located in the state of Nevada, or in the state where such foreign corporation desiring such

consolidation resides, as may be determined by a vote of two-thirds of the stockholders of such consolidation after the same shall be completed, and in case it shall be determined upon such vote being had, to remove the principal place of business of such consolidation out of this state, the certificate provided for in section one shall be amended so as to show the county and state where the principal place of business is located; and, provided further, that in case the principal place of business of such corporation shall be removed out of this state, there shall be an agent of such corporation appointed in this state, in the county where its property is situated, upon whom all legal process may be served, and the failure of such corporation to appoint such agent shall subject it to a fine of fifty dollars per day, to be recovered in the name of the state of Nevada, as in other cases of fines and penalties.

An act authorizing the sale by any railroad corporation owning any railroad in this state, of its property and franchises, or any part thereof, to any other railroad corporation, whether organized under the laws of this state or of any other state or territory, or under any act of congress; also authorizing the corporation purchasing the same to operate such railroad, to build and operate extensions or branches thereof, and for that purpose to exercise the power of eminent domain.

May Exercise the Power of Eminent Domain—To File Copy of Certificate with County Recorder of Each County.

C. L. Sec. 1042. (Section 1.) Any railroad corporation owning any railroad in this state, may sell, convey and transfer its property and franchises, or any part thereof, to any other railroad corporation, whether organized under the laws of this state or of any other state or territory, or under any act of congress; and any such

other railroad corporation receiving such conveyance may hold and operate such railroad franchises and property within this state, build and operate extensions or branches thereof, and for that purpose exercise the power of eminent domain, and do any other business in connection therewith, as fully and effectually to all intents and purposes as if such corporation were organized under the laws of this state; provided, nevertheless, that before any corporation incorporated or organized otherwise than under the laws of this state, shall acquire any railroad in this state by virtue of this law, it shall file in the office of the county recorder of each county in which the same shall be situated, a copy of its certificate or articles of incorporation or of the act or law by which it was created, with a certified list of its officers, in the manner and form required by section one of an act of the legislature of the state of Nevada entitled "An act to amend an act entitled 'An act to require foreign corporations to furnish evidence of their incorporation and corporate name,' approved March 3, 1869," approved January 30, 1877.

Service on Non-Resident, Corporation or Joint Stock Association—Publication.

C. L. Sec. 3125. (Sec. 30.) When the person on whom the service is to be made resides out of the state, or has departed from the state, or cannot, after due diligence, be found within the state, or conceals himself to avoid the service of summons, or being a corporation or joint stock association, cannot be served as provided in section twenty-nine, and the fact shall appear by affidavit, to the satisfaction of the court or judge thereof, and it shall appear, either by affidavit or by a verified complaint on file, that a cause of action exists against the defendant in respect to whom the service is to be made, or that he is a necessary or proper party to the action, such court or judge may grant an order that the service be made by the publication of the summons.

Oregon—Statutes Relating to Foreign Corporations.

Insurance Companies.

Resident-Agent to be Designated.

Fee for Filing Certificate.

Surety Companies.

Navigation Companies.

Life Insurance Companies.

Fees.

Power to Acquire Lands.

Building and Loan Associations.

Insurance Companies—Fees and Reports.

Service of Summons by Publication.

Insurance Companies.

[2 Hill's Ann. Code.]

Sec. 3272. No foreign corporation or association shall be permitted to transact the business of fire or marine insurance, brokerage or express, within the limits of this state without first complying with the provisions of section two of this act; and every person acting or professing to act as agent for such foreign corporation, before such compliance, shall be guilty of a misdemeanor, and on conviction shall be punished by a fine not exceeding one thousand dollars or imprisonment in the county jail not exceeding one year, or both, at the discretion of the court.

Sec. 3273. When any corporation or association, having made such deposit, shall desire to cease business in this state and withdraw its capital, it may do so, by first giving six months' public notice of such intention by continuous publication in three weekly newspapers, published in and of general circulation in the state, and if no claim shall be filed against such cor-

poration within said six months, the deposit may be withdrawn.

Sec. 3274. All residents of this state having outstanding policies of insurance made or effected within this state upon property, and all persons having claims or demands against such corporations or associations, for which such deposit is security, may file the same with said county treasurer, prior to the time when such deposit is withdrawn, as in the preceding section is provided; and such deposit shall not be withdrawn until such policies of insurance are provided for, and such claims adjusted and settled, without leaving a sufficient amount to cover the same in the hands of such treasurer.

Sec. 3275. The corporation or association, desirous of discontinuing business, and withdrawing its deposit, may, at the expiration of the period required for publishing its notice, as in section 3273 provided, in case it cannot amicably adjust its matters with persons having or holding policies of insurance against, petition the circuit court of the county for an adjustment of the same, making the claimants parties, and the court shall have full jurisdiction to examine and determine the same as in proceedings in equity.

Resident-Agent to be Designated.

Sec. 3276. A foreign corporation, before transacting business in this state, must duly execute and acknowledge a power of attorney, and cause the same to be recorded in the county clerk's office of each county where it has a resident agent, which power of attorney, so long as such company shall have places of business in the state, shall be irrevocable, except by the substitution of another qualified person for the one mentioned therein as attorney for such company.

Sec. 3277. Such power of attorney shall appoint some person who is a citizen of the United States, and a citizen and resident of this state, an attorney for such company, and shall author-

ize and empower such attorney to accept service of all writs and process, requisite and necessary to give complete jurisdiction of such corporation to any of the courts of this state, or United States courts therein, and shall constitute such attorney the authorized agent of such corporation, upon whom lawful and valid service may be made of all writs and process in any action, suit, or proceeding commenced by or against any such corporation, in any of the courts mentioned in this section, and necessary to give such courts complete jurisdiction thereof.

Fee for Filing Certificate.

Sec. 3278. A corporation or company offering to file a certificate of deposit with the state treasurer shall pay such treasurer a fee of ten dollars therefor, and all expenses of printing any notice required by this chapter shall be paid by the company concerning which such notice is published.

Sec. 3279. Any surety company with a paid-up capital of two hundred and fifty thousand dollars, incorporated under the laws of any state of the United States, either solely or among other things for the purpose of transacting business as surety on obligations of persons or corporations, may transact such surety business in this state upon complying with the provisions of this act, and not otherwise. Each such surety company must show to the insurance commissioner of this state that it is possessed of the capital and assets required by this section, and shall pay to such commissioner the sum of one hundred dollars annually for a license to transact such business in this state. If such surety company is engaged in other insurance business, it shall pay the above license, together with the license or licenses required by law for the transaction of such other insurance business. The insurance commissioner shall dispose of all moneys received for such

licenses, as required by the laws regulating insurance licenses.

Sec. 3280. No surety company not incorporated under the authority of this state shall directly or indirectly take risks or transact business in this state until it shall have first appointed the secretary of state of this state to be the true and lawful attorney of such company in and for this state, upon whom all lawful process may be served with the same effect as if the company existed in this state. Said power of attorney shall stipulate and agree on the part of the company that any lawful process against the company which is served on said attorney shall be of the same legal force and validity as if served on the company, and that the authority shall continue in force so long as any liability remains outstanding in this state. A certificate of such appointment shall be filed in the office of the secretary of state, and copies certified by him shall be received in evidence in all the courts of this state. Service of process in actions and proceedings upon such attorney shall be deemed service upon the principal; but such principal shall be allowed thirty days thereafter within which to appear and plead in all such actions and proceedings.

Sec. 3281. Whenever any lawful process against a surety company shall be served upon the secretary of state, he shall forthwith forward a copy of the process served upon him by mail postpaid and directed to the secretary of the company. For each copy of process the secretary of state shall collect the sum of five dollars, which shall be paid by the plaintiff at the time of such service; the same to be recovered by him as a part of the taxable costs if he prevails in the suit.

Sec. 3282. Any surety company may, on production of evidence of solvency and credit satisfactory to the judge, court, head of department, or other officer authorized to approve any bond

or undertaking, be accepted as surety upon the bond or undertaking of any person or corporation required by the laws of this state to execute a bond or undertaking; and if such company shall furnish satisfactory evidence of its ability to provide all the security required by law, no additional surety may be exacted; but other surety may, in the discretion of the official authorized to approve such undertaking, be required, and such surety (surety company) may be released from its liability on the same terms and conditions as are by law prescribed for the release of individuals; it being the true intent and meaning of this act to enable corporations created for that purpose to become surety on bonds or undertakings required by law subject to all the rights and liabilities of private parties.

Sec. 3283. Any court or officer whose duty it is to pass upon the account of any person or corporation required by law to give a bond or undertaking, may, whenever such person or corporation has given any such surety company as surety upon said bond or undertaking, allow in the settlement of such account a reasonable sum for the expense of securing such surety.

Sec. 3284. Any company which shall execute any bond or undertaking as surety under the provisions of this act shall be estopped, in any proceedings to enforce the liability which it shall have assumed to incur, to deny its corporate power to execute such instrument or assume such liability.

Navigation Companies.

Sec. 3285. The owner or owners of any vessel propelled in whole or in part by steam, owned without this state, and engaged in navigating the waters of this state, or plying between any port of this state and any port or place without this state, is a foreign corporation within the meaning of this chapter; and the resident agent of such vessel is the attorney of such corporation

within the meaning of this chapter, and shall pay into the county treasury of the county in which he resides the sum of twenty-five dollars per quarter as such agent or attorney, and upon the production of the county treasurer's receipt for such sum the county clerk shall issue a license to such agent or attorney to act as such for the ensuing three months from the date of such license.

Sec. 3286. Each county treasurer shall be entitled to receive and retain three per centum of all moneys received by him under this chapter, and each county clerk shall be entitled to demand and receive from the person applying for such license the sum of two dollars for issuing the same.

Sec. 3287. The county clerk shall record all licenses issued by him under the provisions of this chapter, specifying therein the date of such license, the amount of quarterly tax, to whom issued, and for what purpose. On the first day of each month, such clerk shall prepare and transmit to the secretary of state a certified copy of such record.

Sec. 3288. Any person who shall act as agent or attorney for any vessel without having first obtained the license prescribed in this chapter shall forfeit and pay to the state of Oregon the sum of one hundred dollars, to be recovered by action in the name of the state as other fines and penalties are recovered.

Sec. 3289. Any person who acts or professes to act as the agent, representative, or business man of any vessel mentioned in section 3285 of this chapter, within this state, shall be deemed the agent or attorney thereof within the meaning of this chapter.

Life Insurance Companies.

Sec. 3290. All companies having agents or solicitors doing business within the state as life insurance agents or solicitors shall pay to the treasurer of this state the sum of one hundred

dollars annually, in gold coin of the United States of America.

Fees.

Sec. 3291. The fees of the state treasurer for carrying out such portion of the provisions of this chapter as shall pertain to his office shall be as follows:

For keeping such deposits, and for returning to depositors the coupons on all bonds deposited by them, one-eighth of one per centum per annum on all amounts so deposited in his charge.

Sec. 3292. The fees of the secretary of state for carrying out such portions of this chapter as pertain to the duties of his office shall be as follows:

For recording each certificate of deposit and issuing such certificate to depositors, twenty-five dollars.

For issuing license to life insurance agents or solicitors annually, ten dollars.

For commission on the sale of stamps, as provided in section 16 of this chapter, five per centum of the amount so sold.

Power to Acquire Lands.

Sec. 2988. Any alien may acquire and hold lands, or any right thereto, or interest therein, by purchase, devise or descent, and he may convey, mortgage, and devise the same, and if he shall die intestate, the same shall descend to his heirs; and in all cases such lands shall be held conveyed, mortgaged, or devised, or shall descend in like manner and with like effect, as if such alien were a native citizen of this state or of the United States; and any corporation incorporated under the laws of any other state in the United States, or of any foreign country, not prohibited by the constitution or laws of this state from carrying on business in this state may acquire, hold, use and dispose of, in the corporate name, all real estate necessary or convenient to

carry into effect the object of the incorporation and the transaction of its business, and also any interest in real estate by mortgage or otherwise, as security for moneys due to or loans made by such corporation.

Building and Savings and Loan Associations.

An act to regulate the incorporation and business of building and land and savings and loan associations doing a general business.

Be it enacted by the legislature of the state of Oregon:

Sec. 16. Every building and loan association or savings and loan association, organized under the laws of any other state, territory or nation, shall, before commencing to do business in this state, file with the secretary of state of this state a duly authenticated copy of its charter or articles of incorporation and by-laws; second, file with the secretary of state of this state a duly authenticated copy of a resolution adopted by the board of directors of such association appointing an attorney for such association, resident in this state, upon whom legal process may be served and whose name and residence shall be stated in said resolutions, and also an agreement that said association will pay every judgment that may be taken against it upon any such action within sixty (60) days after the final judgment shall have been entered; third, file with the secretary of state a certificate of the authorized officer of such other state, showing that securities of the value of one hundred thousand (\$100,000) dollars are on deposit with such state officer or duly incorporated trust company, in trust for all the members and creditors of such building and loan association; fourth, pay to the secretary of state five (\$5) dollars as fees for filing the papers mentioned in this act. [Laws of Oregon, 1895, p. 103.]

Insurance Companies—Fees and Reports.

An act to amend section 3580 of chapter I of the miscellaneous laws of Oregon, as compiled and annotated by W. Lair Hill, and as amended by act approved February twenty-fifth, eighteen hundred and eighty-nine.

Be it enacted by the legislature of the state of Oregon:

Section 1. That section 3580 be amended so as to read as follows:

Sec. 3580. The commissioner shall collect for filing each power of attorney, or issuing his certificate as required by law, five dollars. For an annual license of each fire insurance company to transact business throughout this state, fifty dollars. For an annual license to each life insurance company, co-operative insurance association or mutual benefit society to transact business throughout this state, one hundred dollars. For an annual license to each life and accident or an accident insurance company to transact business throughout this state, one hundred dollars. Every foreign fire, fire and marine, life, life and accident, plate glass and steam boiler insurance company now doing business in this state or that may hereafter do business in this state, shall, within sixty (60) days after the passage of this act, and on or before renewal or issuing of a license, appoint a resident general agent on whom legal service, if any necessary, may be made and to whom all other agents of the company in this state shall make report, not less frequently than once a week, of business transacted; and said officer shall, on or before the first day of March of each year, furnish the insurance commissioner of this state a sworn statement of the total business transacted by such company within the state of Oregon during the year ending December thirty-first prior thereto. Such statement shall show the total gross premiums received during the year, from which shall be deducted returned

premiums and losses paid in this state; and every such fire, fire and marine, life, life and accident, plate glass and steam boiler insurance company shall within thirty days from the date of such annual statement pay to the insurance commissioner a fee of five dollars for filing such statement. The insurance commissioner shall file such verified statement and schedule in his office, and shall certify the amount of such gross premiums received, less premiums returned and losses paid in the state to the state treasurer. Within ten days thereafter such foreign insurance company shall pay or cause to be paid into the state treasury a tax of two per cent upon all such gross receipts, less premiums returned and amount of losses paid, which payment, when so made, shall be in lieu of all taxes upon the personal property of such company and the shares of stock therein. Any insurance company failing or refusing to render such statement and to pay the required two per cent tax thereon for more than thirty days after the time so specified, shall be liable to a fine of one hundred dollars for each additional day such statement and payment is delayed and to have its license revoked. And the said taxes may be collected by distraint and fine recovered by an action to be instituted by the prosecuting attorney, in the name of the state, in the county where the principal office of such insurance company is located; and such company may be enjoined from doing business in this state until payment of such taxes and fine, should any be imposed, is fully made, and notice thereof be given to the insurance commissioner. Upon payment of such taxes and fines or other moneys to the state treasurer, and the giving of notice to the insurance commissioner as prescribed, and on full compliance in all other respects with the laws of Oregon, such company may be permitted by the insurance commissioner to resume business; provided, that all real prop-

erty, if any, of such company shall be listed, assessed and taxed the same as real property of like character of individuals.

[Laws of Oregon, 1895, p. 83.]

An act to amend sections 56 and 57 of the laws of Oregon as compiled and annotated by W. Lair Hill, relating to service by publication of summons, and manner of commencing civil actions.

Be it enacted by the legislative assembly of the state of Oregon:

Section 1. That section 56 of title V, chapter 1, of Hill's code of civil procedure be amended to read as follows:

Sec. 56. When service of the summons cannot be made as prescribed in the last preceding section, and the defendant, after due diligence, cannot be found within the state, and when that fact appears by affidavit to the satisfaction of the court or judge thereof, or judge authorized to grant the order herein provided, or justice of the peace in an action in a justice's court; and it also appears that a cause of action exists against the defendant, or that he is a proper party to an action relating to real property in this state, the court or judge thereof, or judge authorized to grant the order, or a justice of the peace in an action in a justice's court, shall grant an order that the service be made by publication of a summons in either of the following cases:

1. When the defendant is a foreign corporation and has property within the state, or the cause of action arose therein.

[General Laws of Oregon, p. 5.]

Washington—Statutes Relating to Foreign Corporations.

Power to do Business.

Copy of Charter to be Filed.

Agent to be Appointed.

What Corporations Are Affected Hereby.

Assessor to Ascertain—What.

County Auditors to Report—What.

Fees.

Penalty.

Assessor Failing to Report—Penalty.

Action Against State Treasurer—When.

Jurisdiction.

Railroads—Extension into State.

Service of Summons by Publication.

Charter to be Filed with Secretary of State.

[1 Ballinger Codes, Washington, title XXIII, chapter II of Foreign Corporations.]

Power of, to do Business in This State.

Sec. 4291. Any corporation incorporated under the laws of any state or territory in the United States, or of any foreign country, state, or colony, for any of the purposes for which domestic corporations are authorized to be formed under the laws of this state, shall have full power and is hereby authorized to sue and to be sued in any court having competent jurisdiction, to acquire, purchase, hold, mortgage, sell, convey, or otherwise dispose of, in the corporate name, all real estate or personal property necessary or convenient to carry into effect the objects and purposes of its corporation, and also any interest in real estate, by mortgage or otherwise do [due] to or loans made by such foreign corporations within the boundaries of this state, either prior to or

after the passage of this act, and generally do and perform every act and transact every kind of business within this state in the same manner and to the same extent as corporations incorporated and organized under the laws of this state are authorized to do under the laws of this state, by a compliance with all the conditions prescribed by the next two succeeding sections of this chapter; provided, however, that this chapter shall not be [so] construed as to allow such foreign corporation to transact business within the state on more favorable conditions than are prescribed by law for a similar corporation organized under the laws of this state; and provided further, that no corporation, the majority of the capital stock of which is owned by aliens, other than those who in good faith have declared their intention to become citizens of the United States, shall acquire the ownership of any lands in this state other than lands containing valuable deposits of minerals, metals, iron, coal, or fire clay, and the necessary land for mills and machinery to be used in the development thereof, and the manufacture of the products therefrom, except where acquired under mortgage, or in good faith in the ordinary course of justice in the collection of debts; provided further, that no foreign corporation which is hereafter organized which has among its other powers the business of dealing in real estate, and buying and selling the same, and for the purpose of carrying on a real estate brokerage business, shall be permitted to transact such business of buying and selling and dealing in real estate, and carrying on a brokerage business therein, in this state; but this prohibition shall not extend to any other business for the transaction of which such corporation may be organized.

Certified Copy of Charter, etc., to be Filed and Recorded.

Sec. 4292. Such corporation shall cause to be

filed and recorded in the office of the secretary of state a certified copy of its charter, articles of incorporation, memorandum of association, or certificate of incorporation, certified to by the custodian of the same according to the laws of the state or territory, country, or colony, where such corporation is incorporated, or who is authorized to issue certificates of incorporation according to the laws of such state, territory, or foreign country or colony. The instruments herein required to be filed and recorded shall be attested by the certifying officer under his hand and seal of office, which attestation shall be prima facie proof of the facts therein stated, and of the genuineness of the certificate. If such officer has no official seal, his certificate shall state that fact over his signature, and thereupon the secretary of state, or of the territory, in case of corporations within the United States, and the consul general, consul, vice consul, deputy consul, consular agent, or commercial agent of the United States, at or nearest to the place where such certificate is made, in the case of corporations not within the United States, shall certify under his hand and seal of office to the genuineness of the signature of the officer making the certificate, and to the fact that at the time of making such certificate the person making the same held the office described in the certificate.

Appointment of Agent to be Filed and Recorded.

Sec. 4293. Such corporations shall also constitute and appoint an agent who shall reside at the place in the state where the principal business of the corporation is to be carried on, to be designated as hereinafter required. Such appointment shall be in writing, signed by the president or chief officer of such corporation, and shall be attested by its corporate seal, and shall contain the name of the agent, his place of residence, and the place where the principal business of such corporation is to be carried on, and shall

authorize such agent to accept service of process in any action or suit pertaining to the property, business, or transactions of such corporation within this state in which such corporation may be a party. The signature of such president or chief officer, attested by the corporate seal to such written appointment, shall be sufficient proof of the appointment of such agent. Such appointment, when duly executed, shall be filed for record in the office of the secretary of state by such corporation, and shall be there recorded, and such corporation shall have and keep continually some resident agent, empowered as aforesaid, during all the time such corporation shall conduct or carry on any business within this state, and service of any process, pleading, notice, or other paper shall be taken and held as due service on such corporation. Such corporation may change its agent or its principal place of business from time to time by filing and recording with the secretary of state a new appointment, stating the change of such agent or the change in its principal place of business.

Not to File Certified Copies or Have Them Recorded—When.

Sec. 4294. No corporation which has heretofore complied with the laws of the state or territory of Washington hitherto existing, regarding foreign corporations, and has kept a duly appointed agent within the boundaries of the state as heretofore required, shall be required to file for record, or cause to be recorded, the certified copies required by this act, or to execute or file for record, or cause to be recorded, a new appointment of agents as herein required.

Assessor to Ascertain Names of Corporations, Agents, etc.

Sec. 4295. It shall be the duty of each and every county assessor in this state to ascertain each and every year, at the time of the tax

assessment of his county, the name of every foreign corporation doing business by agent or otherwise within his county, the nature of such business, and the name of the agent of each of such corporations, if any there be, together with such agent's place of address, and shall, within ten days from and after the compilation of such assessment, make out and deliver to the county auditor of his county a full and complete list of the names of such corporations doing business in his county, together with the nature of the business so carried on by each of such corporations, and the name of the resident agent of each of such corporations, if any there be, and the place of residence of each of such agents.

County Auditors to Report Names of Corporations, Agents, etc.

Sec. 4296. It shall be the duty of each and every county auditor in this state to make out and transmit to the secretary of state, within thirty days after the receipt by him from such county assessor of the lists provided in the last preceding section, a full, true, and concise statement of the names of such corporations, their place of business, the nature of business conducted by such corporations, and the name of each and every agent of each of such corporations, if any there be, and the places of residence of such agents.

Fees Allowed for Recording.

Sec. 4297. The fees for recording, under the provisions of this act, shall be the same as are allowed by law to the secretary of state for certified copies of papers on file in his office.

Agent is Guilty of Misdemeanor, When—How Punished.

Sec. 4298. Any agent of any foreign corporation, conducting or carrying on business within the limits of this state, for and in the name of such corporation, contrary to any of the provi-

sions of this chapter, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not exceeding two hundred dollars, or by imprisonment in the county jail for a term not exceeding three months, or by both such fine and imprisonment.

Assessor is Guilty of Misdemeanor, When—How Punished.

Sec. 4299. Any county assessor failing to make out and deliver to the county auditor of his county a list within the time and in the manner provided in section 4295, and any county auditor failing to make out and transmit to the secretary of state a statement, within the time and in the manner provided in section 4296, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not exceeding three hundred dollars.

Action Authorized Against State Treasurer.

Sec. 4300. Whenever any insurance company of another state, which has deposited with the treasurer of this state any securities or other assets to be held in trust for the policy holders of such company, becomes insolvent, any one or more of such policy holders may bring an action in the superior court of Thurston county against the state treasurer for the administration of the trust and distribution of the securities and assets for the benefit of the beneficiaries.

Jurisdiction, etc.

Sec. 4301. Such court in such cases shall have all the powers and jurisdiction of a court of equity; provided, that said trust shall be administered and said securities and assets distributed by the state treasurer under the direction of said court.

Extension of Railroad into State—Preliminaries Required.

Sec. 4305. Any railroad corporation chartered by or organized under the laws of the United

States, or of any state or territory whose constructed railroad shall reach or intersect the boundary line of this state at any point, may extent its railroad into this state from any such point or points to any place or places within the state, and may build branches from any point on such extension. Before making such extension or building any such branch road, such corporation shall, by resolution of its directors or trustees, to be entered in the record of its proceedings, designate the route of such proposed extension or branch by indicating the place from and to which such extension or branch is to be constructed, and the estimated length of such extension or branch, and the name of each county in this state through or into which it is constructed, or intended to be constructed, and file a copy of such record, certified by the president and secretary, in the office of the secretary of state, who shall indorse thereon the date of filing thereof, and record the same. Thereupon such corporation shall have the rights and privileges to make such extension or build such branch, and receive such aid thereto, as it would have had had it been authorized so to do by articles of incorporation duly filed in accordance with the laws of this state.

Service of Summons by Publication.

Sec. 4877. When the defendant cannot be found within the state, (of which the return of the sheriff of the county in which the action is brought, that the defendant can not be found in the county, is prima facie evidence), and upon the filing of an affidavit of the plaintiff, his agent or attorney, with the clerk of the court, stating that he believes that the defendant is not a resident of the state, or can not be found therein, and that he has deposited a copy of the-summons and complaint in the postoffice, directed to the defendant at his place of residence, unless it is stated in the affidavit that such residence is not

known to the affiant, and stating the existence of one of the cases hereinafter specified, the service may be made by publication of the summons, by the plaintiff or his attorney in either of the following cases:

1. When the defendant is a foreign corporation, and has property within the state. * * * *

Foreign Corporations Must File Articles with Secretary of State.

Act March 13, 1899, Stat. 1899, p. 100.

1. Any foreign corporation doing business in this state which shall fail to comply with the provisions of sections 1525 and 1526 of 1 Hill's Annotated Statutes and Codes of Washington, shall be subject to a penalty of two hundred and fifty dollars to be recovered in a civil action to be instituted by the attorney general in the name of the state of Washington, upon his being furnished with a sworn statement of facts sufficient to justify such action.

2. All penalties so recovered shall be paid into the general fund of the state treasury.

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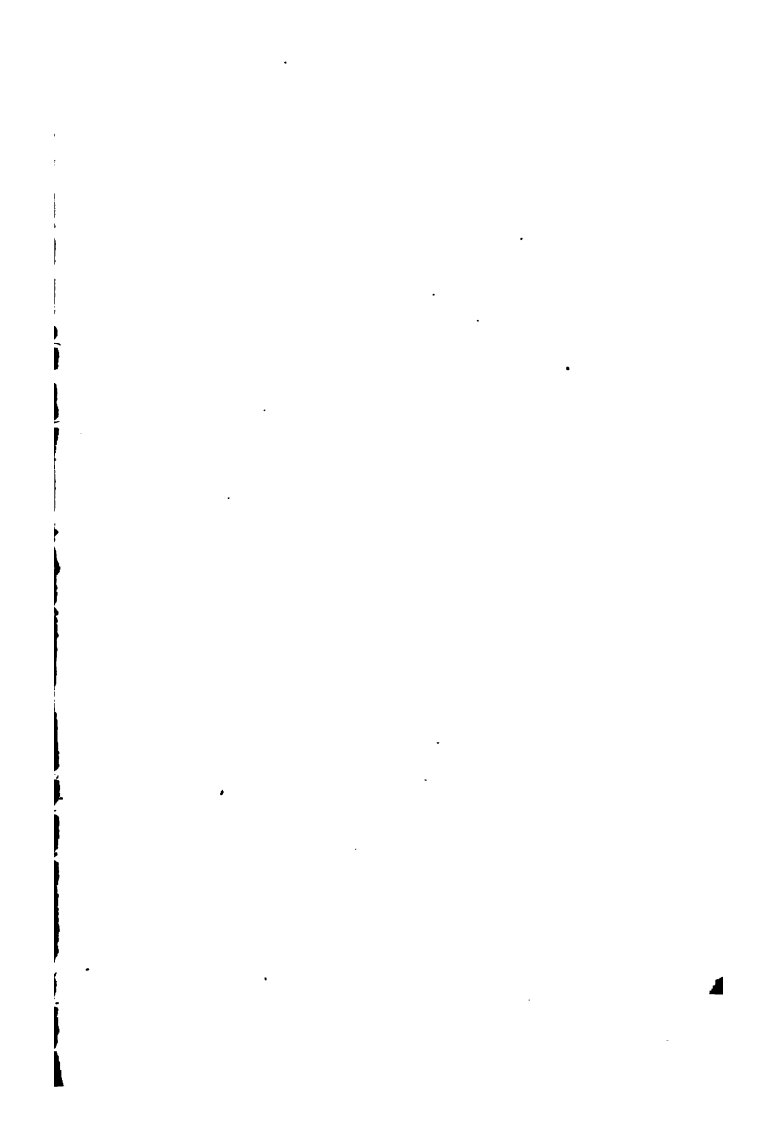
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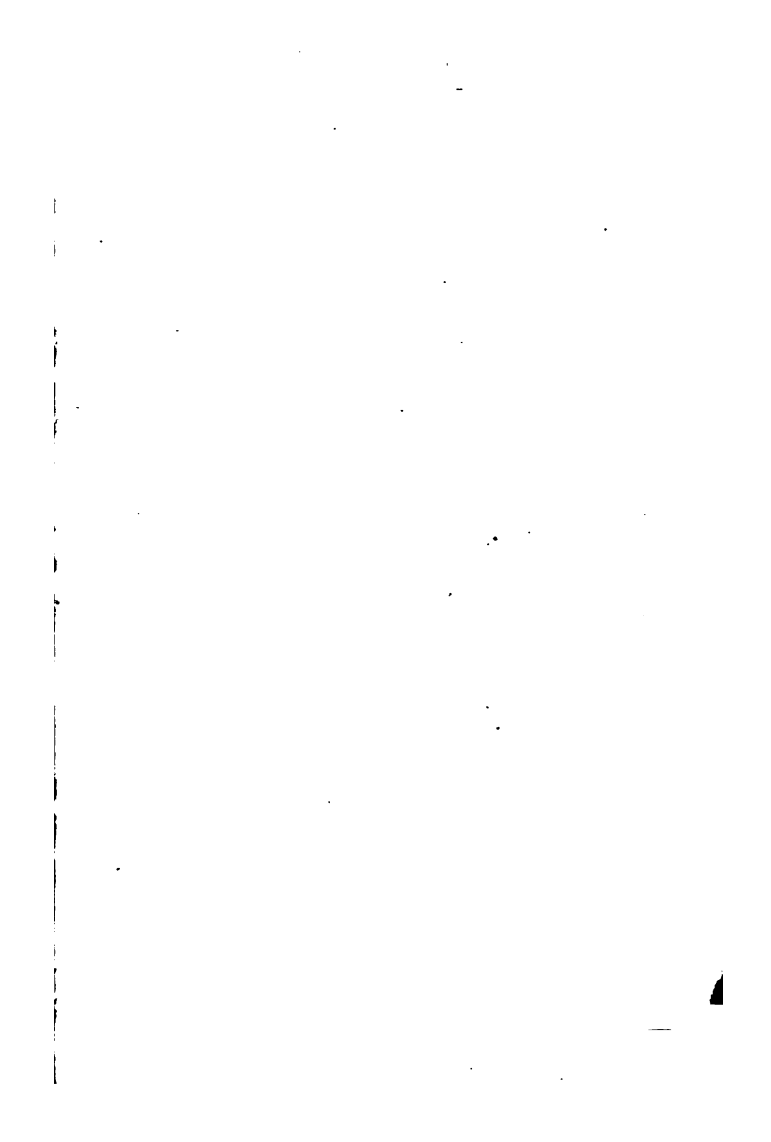
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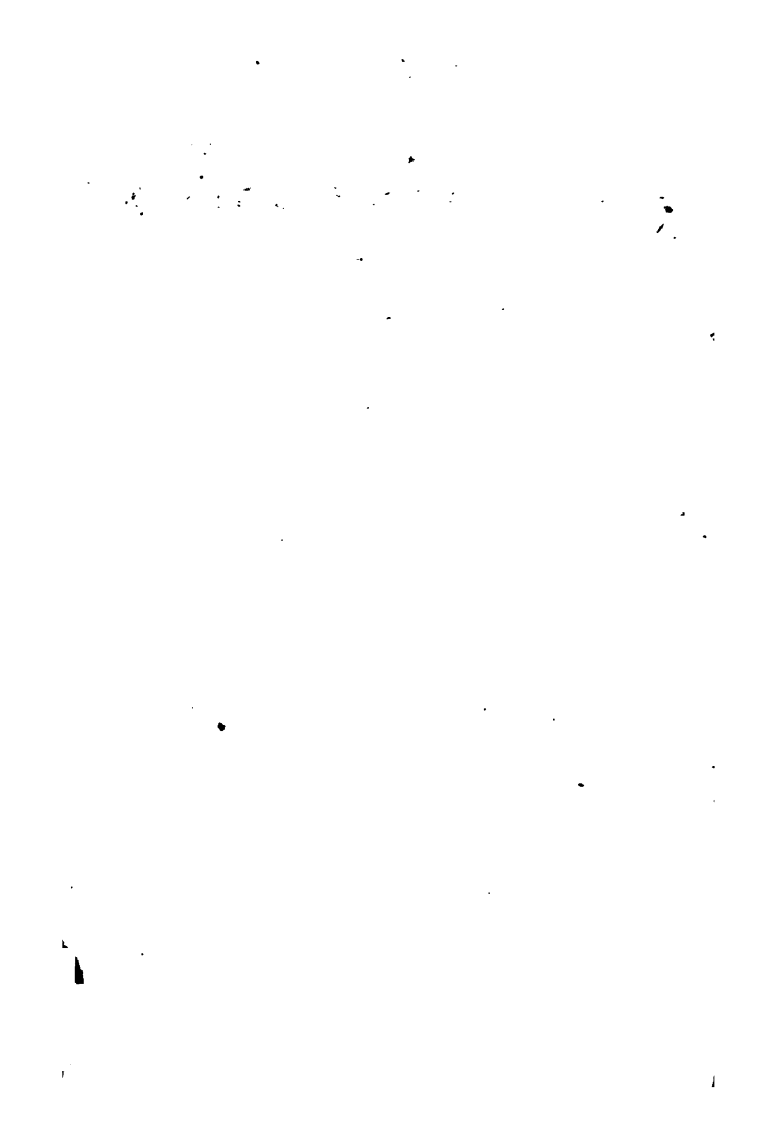
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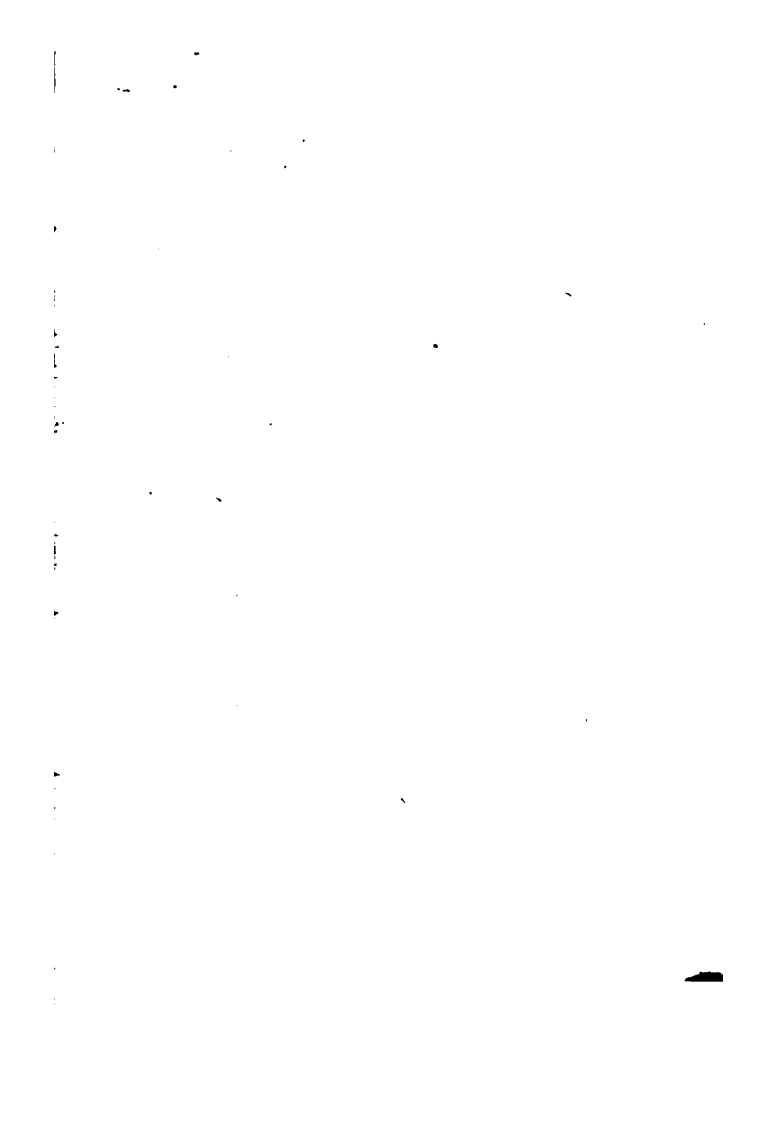
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